

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-202-956-7500
FACSIMILE: 1-202-956-7676
WWW.SULLCROM.COM

1700 New York Avenue, N.W.
Suite 700
Washington, D.C. 20006-5215

NEW YORK • LOS ANGELES • PALO ALTO
BRUSSELS • FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

February 28, 2023

Dear Judge:

I am pleased to submit this letter of recommendation on behalf of Jason Gallant. I am a Partner in Sullivan & Cromwell's litigation group and have had the pleasure of working directly with Jason on complex litigation relating to GDP-linked securities that the Republic of Argentina issued in 2005. I would like to highlight three reasons why I believe Jason would be an excellent addition to your chambers.

First, during his time at Sullivan & Cromwell, Jason has gained valuable experience from a wide range of projects touching on the key milestones in a complex litigation. Jason has, for example, helped take and defend important depositions; drafted correspondence with opposing counsel; worked on motions for summary judgment (and related S.D.N.Y. Rule 56.1 statements); and assisted with preparing expert reports and depositions. Having seen a case from all of these angles will help Jason navigate the matters that come before your court.

Second, apart from the breadth of Jason's experience, I have worked with him directly and have been impressed with the quality of his work. The matter we are working on together involves securities that Argentina issued as part of its debt restructuring in 2005. The cases—which are pending before Hon. Loretta Preska in the Southern District of New York and before the High Court in London—require understanding the mechanics of complex financial instruments that tie payments to the performance of the Republic's real economy. In these cases, Jason has been the point person on many important research projects and was a valuable member of our trial team in London, where he (i) helped coordinate and prepare the “trial bundles” for each witness; (ii) created important factual chronologies that were incorporated into our written submissions; and (iii) managed the paralegal team, overseeing fundamental tasks such as the translation of exhibits.

Jason has strong research and writing skills, is organized, and has the attention to detail that we expect of our litigation associates.

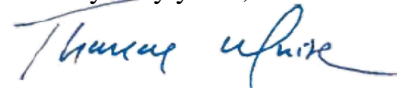
Third, and finally, Jason has many other qualities that will make him an

-2-

excellent law clerk. He has a great attitude; collaborates well with his peers and supervisors; and has shown excellent time management skills. He also has cheerfully volunteered to do assignments that required late-night or weekend work. I am confident he will do well working as part of the close-knit group supporting the Court.

Please contact me at 212-558-3551 if I can be of further assistance in evaluating Jason's clerkship application.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Thomas C. White", with a stylized, cursive script.

Thomas C. White

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Jason Gallant has asked me to update a letter I wrote in June 2020 to support his recent clerkship applications. He was a student in my Federal Civil Procedure class in Fall 2018 and also in my Spring 2020 Remedies class and I think he would be a welcome addition to your chambers.

Jason was a first-year law student in my large Federal Civil Procedure class of almost one hundred students. Jason received the grade of "A-" on the final exam in that class. He was quite reserved and timid at the beginning of the term but grew in confidence as the semester progressed. Jason was always prepared when I called on him in class and was willing to tackle topics involving class or religion when I posed controversial questions to him. Jason was also in a small section of my Spring 2020 Remedies class. Because all classes were graded on a P/F basis in the 2020 Spring semester, I cannot report what grade he would have received. What I can tell you, though, is despite a university-wide required transition to online classes due to the coronavirus pandemic, Jason continued to consistently attend class despite his tremendous obligations on the Texas Law Review.

It was my understanding that Jason was interested in clerking because he had long-term aspirations to enter the field of white-collar criminal defense and governmental investigations. He used his time wisely in law school to prepare for that career, as he was active in oral advocacy through moot court competitions and also held a judicial internship. In addition to those more academic activities, Jason was also a singer who performed in a law school "a capella" group that performed at official law school events, like the new student orientation day, as well as in the law school's annual student musical skit.

I believe Jason Gallant will be a committed and hardworking judicial clerk and a welcome addition in any judicial chambers. I recommend him to you and would be happy to discuss him in more detail if you would like.

Respectfully,

A. Mechele Dickerson
Arthur L. Moller Chair in Bankruptcy Law and Practice
University Distinguished Teaching Professor
The University of Texas School of Law

Mechele Dickerson - mdickerson@law.utexas.edu - 512-232-1311

March 1, 2022

MEMORANDUM TO: Partner

FROM: Associate

RE: Research Questions Responses

This memorandum analyzes (i) whether any of Plaintiff's claims are time-barred, (ii) whether Plaintiff's complaint can withstand a motion for summary judgment, and (iii) whether Defendant can be held individually liable under any of Plaintiff's claims. On point (i), Plaintiff's claims are likely not time-barred, but the New York Education Law's notice of claim requirement will likely result in dismissal of her state claims against the Department of Education ("DOE"). On point (ii), it is likely that Plaintiff's complaints can withstand a motion for summary judgment. On point (iii), while Defendant cannot be held individually liable under Title VII of the Civil Rights Act, she can be held individually liable under the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL").

I. Plaintiff's Claims are Likely Not Time-Barred

Defendants have argued that Plaintiff's claims are time-barred, both for failure to file within the 300-day statute of limitations for her claims, as well as for failure to file a notice of claim. Memorandum of Law in Support of Defendants' Motion to Dismiss 9, ECF No. 18. For the following reasons, some of these claims will succeed.

A. Plaintiff's Claims are Not Outside the 300-Day Statute of Limitations

Defendants argue that Plaintiff's unlawful termination claim under Title VII is time-barred because she is required to file an administrative charge with the EEOC or other administrative agency "within 300 days after the alleged unlawful employment practice occurred." Mem. of Law Supp. Defs.' Mot. Dismiss 9, ECF No. 18 (citing 42 U.S.C. 2000e-5(e)(1); 29 U.S.C. sec 62(d)).

When "a plaintiff's allegations of discrimination extend beyond the 300-day limitations period, the nature of the claim determines what consideration will be given to the earlier conduct." *Petrosino v. Bell Atlantic*, 385 F.3d 210, 220 (2d Cir. 2004). Claims of a hostile work environment necessarily involve a continued set of violations, and so the 300-day limitations does not begin to run until the last alleged act of hostility in the workplace. *Haghighat v. Reuters America, Inc.*, 120 Fed.Appx.859, 862 (2d Cir. 2005). Claims of wrongful termination necessarily involve a "discrete act" and are barred after 300 days following the actual termination. *Petrosino*, 385 F.3d at 220. While claims for discrete acts are barred more than 300 days after their occurrence, prior discrete acts by an employer may constitute "relevant 'background evidence in support of a timely claim.'" *Id.* (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002)).

Defendants are largely incorrect that Plaintiff's claims are time-barred under the statute of limitations. Plaintiff pleads claims of a hostile work environment, retaliation, and unlawful termination. Complaint 5, ECF No. 1.

Hostile work environment claims are considered ongoing acts, and in order to prevail against the statute of limitations using calculations most favorable to the defendants, Plaintiff need only allege one hostile act after October 30, 2019. She succeeds

by pleading, at a minimum, that Defendant instructed her to speak with an “American accent” sometime in 2020.

Unlawful termination claims must be filed within 300 days of the “discrete act” leading to termination. Defendants have confused Plaintiff’s hostile work environment claims with her unlawful discrimination claim: here, again, Plaintiff was terminated in 2020, and so her claim was well within the 300-day statute of limitations calculated most in the defendant’s favor. Even if defendants are correct in saying that Plaintiff cannot pursue an unlawful termination claim based on alleged acts of discrimination prior to 2019, since Plaintiff was actually terminated within the 300-day statute of limitations, Plaintiff can use these prior acts of discrimination as background evidence in support of her otherwise timely termination claim. *See Morgan*, 536 U.S. at 113.

Therefore, as none of the discrete acts alleged in Plaintiff’s complaint occurred more than 300 days prior to the filing of her complaint, nor did all of the acts committed leading to a hostile work environment occur more than 300 days prior, Plaintiff’s claims should not be time-barred.

B. Plaintiff’s Failure to Serve a Notice of Claim Will Likely Result in Dismissal of her State Claims Against the DOE

Defendants argue that Plaintiff’s NYSHRL and NYCHRL claims should be dismissed for the additional reason that Plaintiff failed to file a notice of claim within 90 days of the claims’ accrual, as required by New York Education Law § 3813. ECF No. 18 at 8. In her opposition to the motion to dismiss, Plaintiff correctly argues that the notice of claim requirement does not apply to school principals. *Santana v. Mount Vernon City Sch.*

Dist./Bd. of Educ., 2021 WL 4523770, at *14 (S.D.N.Y. Sept. 30, 2021) (“Principals are excluded from the statute.”); *Kuperman v. City of New York*, 2021 WL 4442855, at *5 (S.D.N.Y. Sept. 28, 2021) (“Section 3813(1) does not apply, however, to actions against school principals.”) Therefore, Plaintiff’s state claims against Defendant are not affected by the notice of claim requirement.

However, Plaintiff was required to file a notice of claim with respect to her state claims against the DOE. Her complaint does not allege that she did so, and she did not meet this requirement by filing an EEOC/SDHR complaint within the 90-day statutory period¹ because she did not serve a copy of the complaint on the DOE. *See Santana*, 2021 WL 4523770, at *14 (“[A]n EEOC charge may satisfy the requirements of section 3813 so long as the EEOC charge: (1) places the school district on notice of the precise claims alleged; and (2) is served on the party required by section 3813 within the statutory time period.”) (internal quotation marks omitted); *Modica v. New York City Dep’t of Educ.*, 2021 WL 3408587, at *4 (S.D.N.Y. Aug. 4, 2021) (“Although some courts have held that filing an EEOC or SDHR complaint may satisfy the notice of claim requirement, the plaintiff must still plausibly allege that the administrative complaint met § 3813’s requirements, including that the EEOC or SDHR complaint was timely served upon the correct entity.”); *cf. Kuperman*, 2021 WL 4442855, at *5.

Because Plaintiff did not file a notice of claim, the only way that she could avoid dismissal of her state claims against the DOE is by successfully requesting an extension of time to file pursuant to New York Education Law § 3813(2-a): “Upon

¹ Defendants concede that Plaintiff’s claims accrued on June 29, 2020 (ECF No. 18 at 8), and Plaintiff filed her EEOC/SDHR complaint on August 12, 2020. ECF No. 1 at 6.

application, the court, in its discretion, may extend the time to serve a notice of claim.” Courts have “substantial discretion” to consider a variety of factors when deciding notice of claim extension requests, including whether “defendants have had actual knowledge of the facts constituting plaintiffs' claims within three months of accrual of the claim, or a reasonable time thereafter, and there was no evidence of prejudice to defendant.” *Bloom v. New York City Bd. of Educ.*, 2004 WL 639613, at *6 (S.D.N.Y. Mar. 30, 2004).

However, courts routinely deny extension requests that are made past the one-year statute of limitations, in keeping with the second sentence of § 3813(2-a): “The extension shall not exceed the time limited for the commencement of an action by the claimant against any district or any such school.” See *Bernheim v. New York City Dep’t of Educ.*, 2020 WL 3865119, at *4 (S.D.N.Y. July 9, 2020) (“[A]ccording to the statute, a late notice of claim must be filed no later than one year after a cause of action accrues.”); *McDonough v. New York City Dep’t of Educ.*, 2018 WL 4636834, at *8 (S.D.N.Y. Sept. 27, 2018) (“The Court may not permit Plaintiff to file a late notice of claim in this case because the notice is a required condition of his claim that cannot be extended beyond the one year limitations period set forth in the statute.”); cf. *Caviezel v. Great Neck Pub. Sch.*, 739 F. Supp. 2d 273, 280 (E.D.N.Y. 2010), aff’d, 500 F. App’x 16 (2d Cir. 2012) (granting extension request when “plaintiffs' notice was filed only shortly after the notice period expired, and [] the District Defendants were aware of the operative facts underlying the plaintiffs' claim”).

Here, because (i) Plaintiff has little evidence that the DOE had actual knowledge of the facts giving rise to her claim within the 90-day statutory period, (ii) any request she now made for an extension would be well past the one-year statute of

limitations, and (iii) in her opposition to DOE’s motion to dismiss, she conceded that the notice of claim issue was fatal to her state claims against the DOE instead of requesting an extension, it is unlikely that her state claims against the DOE would survive the pending motion to dismiss, let alone summary judgment.

II. Plaintiff’s Claims Are Likely to Survive Summary Judgment on the Merits

As a preliminary matter, Plaintiff asserts claims under Title VII, the New York State Human Rights Law (“NYSHRL”) and the New York City Human Rights Law (“NYCHRL”). “[C]laims asserted under Title VII and the NYSHRL are analyzed pursuant to the same standard; therefore, analysis of identical claims brought by an individual under both of these laws can be performed in tandem.” *E.E.O.C. v. Bloomberg L.P.*, 967 F.Supp.2d 816, 832 (S.D.N.Y. 2013) (citing *Pucino v. Verizon Wireless Commc’ns, Inc.*, 618 F.3d 112, 117 n. 2 (2d Cir.2010)). Claims under the NYCHRL are subject to a different standard, see *infra*.

A. Plaintiff’s Title VII and NYSHRL Claims Would Likely Survive Summary Judgment

Title VII discrimination claims proceed under a burden-shifting standard. First, the plaintiff must present a *prima facie* discrimination case, satisfying a four-factor test: “(1) [the employee] belongs to a protected group; (2) [s]he was qualified for [her] position; (3) [her] employer took an adverse action against [her]; and (4) the adverse action occurred in circumstances giving rise to an inference of race discrimination.” *Kirkland v. Cablevision Sys.*, 760 F.3d 223, 225 (2d Cir. 2014). Once this happens, the burden shifts to the employer to give a legitimate, non-discriminatory reason for its actions. *Id.* Only

after the employer does this need the plaintiff show the employer's neutral reasons are a pretext for racial discrimination on preponderance of the evidence. *Id.*

Once the burden shifts back to the plaintiff under the *McDonnell Douglas* framework, "there are two distinct ways for a plaintiff to prevail – either by proving that a discriminatory motive, more likely than not, motivated the defendants or by proving both that [1] the reasons given by the defendants are not true and [2] that discrimination is the real reason for the actions." *Gordon v. N.Y.C. Bd. of Educ.*, 232 F.3d 111, 117 (2d Cir. 2000) (internal citation omitted). Even if there existed a lawful reason to terminate an employee alleging discrimination, the employee can still recover under a mixed-motive theory if she can prove that the employer was motivated in some small part by discriminatory intent. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 252 (1989) ("[A]n employer may not meet its burden in such a case by merely showing that at the time of the decision it was motivated only in part by a legitimate reason.").

To survive a motion for summary judgment, a plaintiff must allege facts "that at least minimally support an inference of discriminatory motivation." *Taylor v. City of N.Y. (Dep't of Sanitation)*, 2019 WL 3936980, at *4 (S.D.N.Y. Aug. 20, 2019). The types of evidence deemed sufficient to withstand summary judgment are varied, but in general, "[s]tatements that are devoid of any specifics, but replete with conclusions, are insufficient to defeat a properly supported motion for summary judgment." *Risco v. McHugh*, 868 F.Supp.2d 75, 99 (S.D.N.Y. 2012) (internal citation omitted). As a matter of law, an employee's disagreement with a workplace evaluation alone is insufficient to survive the summary judgment stage of a Title VII discrimination claim. *Id.* at 105.

“The circumstances that give rise to an inference of discriminatory motive include actions or remarks made by decisionmakers that could be viewed as reflecting a discriminatory animus.” *Chertkova v. Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir. 1996). Prior comments directed at an employee indicating animus on the basis of membership in a protected class are sufficient to meet this burden. *See, e.g., Richmond v. Gen. Nutrition Ctrs. Inc.*, 2011 WL 2493527, at *15 (S.D.N.Y. June 22, 2011) (comments about an employee’s accent could lead a reasonable fact-finder to conclude adverse employment actions were taken due to race); *Rosario v. N.Y.C. Dep’t of Educ.*, 2011 WL 1465763, at *3 (S.D.N.Y. Apr. 15, 2011) (comments about a Dominican plaintiff’s accent sufficient to survive a motion to dismiss); *Flores v. N.Y.C. Hum. Res. Admin.*, 2011 WL 3611340, at *9, n. 9 (S.D.N.Y. Aug. 16, 2011) (a supervisor belittling a plaintiff’s accent, combined with outside evidence of accent-based discrimination, sufficient to infer racial animus); *Doran v. N.Y. State Dep’t of Health Ofc. of Medicaid Inspector Gen.*, 2017 WL 836027, at *13, *15 (S.D.N.Y. Mar. 2, 2017) (derisive comments about a Russian plaintiff’s accent sufficient to satisfy an inference of racial animus leading to adverse employment decisions). But racist comments by themselves are insufficient to meet this burden if the comment is not specifically directed at the employee. *See, e.g., Perez v. N.Y. State Ofc. of Temporary and Disability Assistance*, 2015 WL 3999311, at *2 (S.D.N.Y. June 30, 2015) (general derogatory comments about Haitians insufficient to establish discriminatory intent against a Dominican plaintiff).

Plaintiff would likely meet the four-factor *McDonnell Douglas* test for prima facie cases of discrimination, and survive a motion for summary judgment by the defendant. The first three factors are easily met: Plaintiff (1) belongs to a protected group,

as she identifies as Hispanic, (2) can show she was qualified for her position as a teacher, as she is duly licensed and has undergone training to that effect, and (3) suffered an adverse employment action, namely, “discontinuation” from her position. The fourth factor, circumstances giving rise to an inference of racial discrimination, is a question of fact for a jury to decide. *See Chertkova*, 92 F.3d at 87 (“Since it is rare indeed to find in an employer’s records proof that a personnel decision was made for a discriminatory reason, [all materials] must be carefully scrutinized for circumstantial evidence that could support an inference of discrimination.”). Plaintiff’s strongest claims of racial animus are from her allegations of Defendant instructing her to speak with an “American accent”, both in private and in public. A reasonable jury could likely infer that any adverse actions taken by Defendant against Plaintiff were because of these comments, and because of this, a judge will likely permit the question to reach the jury. *See, e.g., Richmond, supra; Rosario, supra; Flores, supra.*

Finally, as NYSHRL claims are analyzed pursuant to the same standard as Title VII cases, *see E.E.O.C.*, 967 F.Supp.2d at 832, Plaintiff would likely also survive a motion for summary judgment by the defendant on this claim had it also survived a motion to dismiss for failure to provide notice of claim, *see supra*

B. Plaintiff’s NYCHRL Claim is Likely to Survive Summary

Judgment

While the NYSHRL is subject to the same standard as Title VII, claims brought under the NYCHRL are analyzed “separately and independently from any federal and state law claims.” *Mihalik v. Credit Agricole Cheuvreux N.A., Inc.*, 715 F.3d 102, 109 (2d Cir. 2013).

In NYCHRL cases, similar to the *McDonnell Douglas* framework, a plaintiff must still establish a prima facie case of discrimination on the basis of a protected class, and a defendant must then offer a legitimate reason for an adverse employment action. *Ya-Chen Chen v. City Univ. of N.Y.*, 805 F.3d 59, 75–76 (2d Cir. 2015); *see also Bermudez v. City of N.Y.*, 783 F.Supp.2d 560, 577 (S.D.N.Y. 2011) (“[C]laims of employment discrimination under the NYCHRL are analyzed under the same *McDonnell Douglas* framework applicable to Title VII . . . and NYSHRL claims.”). Once this is satisfied, “summary judgment is [only] appropriate if the record establishes as a matter of law that discrimination . . . play[ed] no role in the defendant’s actions. *Ya-Chen Chen*, 805 F.3d.at 76 (citing *Mihalik*, 715 F.3d at 110 n. 8).

Furthermore, on the merits, the NYCHRL is more lenient to a plaintiff than either Title VII or the NYSHRL in that a client need only prove that membership in a protected class was “a motivating factor”, rather than the but-for cause of the adverse employment action. *Weiss v. JPMorgan Chase & Co.*, 2010 WL 114248, at *4 (S.D.N.Y. Jan. 13, 2010). The NYCHRL embraces a mixed-motive theory in that “where an adverse employment action is shown to be motivated by racial or ethnic animus, *even in part*, the defendant may be held liable.” *Farmer v. Shake Shack Enters., LLC*, 473 F.Supp.3d 309, 330 (S.D.N.Y. 2020) (internal citation omitted) (emphasis added). “That said, a plaintiff’s mere subjective belief that he was discriminated against because of” race is insufficient to prevail under the NYCHRL. *Id.* (internal citation omitted).

On the facts presented, Plaintiff would be likely to prevail at summary judgment for the same reasons she is likely to prevail at summary judgment under Title VII and the NYSHRL, as the analysis of claims and elements under the NYCHRL is

similar, if not more lenient. *See Bermudez*, 783 F.Supp.2d at 577. As under Title VII and the NYSHRL analysis, Plaintiff's strongest evidence to support a claim under NYCHRL are the sporadic comments made by Defendant in which she instructs her not to use an "American accent". Plaintiff's adequate pleading of this fact should support overcoming a motion for summary judgment, and may even be sufficient to prevail on the merits if Plaintiff can show that this incident played some small part in Defendant's poor treatment of her.

II. Defendant Is Subject to Individual Liability Under NYSHRL and NYCHRL, But Not Under Title VII

Individuals are not subject to liability under Title VII. *Patterson v. Cnty. Of Oneida, N.Y.*, 375 F.3d 206, 221 (2d Cir. 2004). Therefore, Plaintiff's Title VII claim against Defendant will likely be dismissed with prejudice. However, individuals are subject to liability under the New York State Human Rights Law and New York City Human Rights Law. *Foster v. Consol. Edison Co. of N.Y., Inc.*, 2021 WL 4461163, at *1 (S.D.N.Y. Sept. 29, 2021).

Individuals can be held liable under the NYSHRL but is "limited to individuals with ownership interest or supervisors, who themselves, have the authority to hire and fire employees." *Malena v. Victoria's Secret Direct, LLC*, 886 F.Supp.2d 349, 366 (S.D.N.Y. 2012). It is likely Defendant meets this criteria as Principal of her school, as she likely had the ability to fire Plaintiff, or at minimum, had the supervisory authority over Plaintiff to justify individual liability. *Cf. Malena*, 886 F.Supp.2d at 366 (agent of employer not individually liable under NYSHRL because he did not have firing authority

or ability to “unilaterally set Plaintiff’s schedule, hours or salary”). Therefore, Defendant can likely be found individually liable under the NYSHRL.

Under the NYCHRL, Defendant is more exposed to individual liability. The NYCHRL makes it unlawful “[f]or an employer or an employee or agent thereof, because of the actual or perceived . . . race . . . of any person . . . to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.” NYCHRL § 8-107(1)(3). Unlike under the NYSHRL, Plaintiff need not show that Defendant had an ownership interest in the school or that she had the authority to hire or fire her. Rather, she need only show that Defendant was an employee of the DOE, and that as an employee of the DOE, Defendant discriminated against Plaintiff in any way due to her race.

Applicant Details

First Name **Robert**
 Last Name **Gallo**
 Citizenship Status **U. S. Citizen**
 Email Address galloro@bc.edu
 Address

Address
Street
180 Telford St Unit 321
City
Boston
State/Territory
Massachusetts
Zip
02135

Contact Phone Number **7745730091**

Applicant Education

BA/BS From **Northwestern University**
 Date of BA/BS **June 2021**
 JD/LLB From **Boston College Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=12201&yr=2011
 Date of JD/LLB **May 20, 2024**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **B.C. Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Cassidy, R. Michael
michael.cassidy@bc.edu
617-552-4343
Koh, Steven
kohst@bc.edu
Coquillet, Daniel
coquill@bc.edu
617-552-8650

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ROBERT GALLO

180 Telford Street, Unit 321 · Brighton, MA 02135 · (774) 573-0091 · galloro@bc.edu

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at Boston College Law School, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term. As an aspiring trial litigator, I believe a district court clerkship is simply the best manner in which to learn how to conduct a trial, providing an opportunity for me to develop both my research and persuasive skills. I believe that my commitment to the study of law and public service, combined with my research and writing skills, make me an excellent candidate for a clerkship with your chambers.

Throughout my time in law school and during my undergraduate experience at Northwestern University, I have worked diligently to improve my research abilities with regards to any topic, from securities to police use of force and to the breadth of topics I have examined for my role on the Law Review Editorial Board. I have further endeavored to use my research skills in support of the public by working in the Securities Division to protect the investing public and in the Boston College Prosecution Clinic. I believe my commitment to determining the right outcome under the law and my use of that in the public service would allow me to contribute immediately to the work of the judiciary.

Enclosed please find my resume, law school transcript, and a writing sample. My writing sample consists of my submission for the Law Review Writing Competition in which I drafted a Motion to Dismiss a possession w/intent to distribute charge on the basis of entrapment. Additionally, you will be receiving letters of recommendation from Professors Daniel Coquillette and Michael Cassidy of Boston College Law School, as well as Professor Steven Koh of Boston University Law School (formerly of Boston College Law School).

Please feel free to contact me at (774) 573-0091 or by email at galloro@bc.edu if you need additional information. Thank you for reading and considering my application.

Respectfully,

Robert Gallo

Enclosures

ROBERT GALLO

180 Telford Street, Unit 321 · Brighton, MA 02135 · (774) 573-0091 · galloro@bc.edu

EDUCATION**BOSTON COLLEGE LAW SCHOOL**

Newton, MA

Candidate for Juris Doctor

May 2024

GPA: 3.780/4.00 (Top 10%)

Honors: Boston College Law Review, Executive Comment Editor (2023-2024), Staff Writer (2022-2023)

NORTHWESTERN UNIVERSITY

Evanston, IL

Bachelor of Arts, History & Earth and Planetary Science, Minor in Philosophy

June 2021

GPA: 3.78/4.0

Honors: Received Department Honors in History; Dean's List

Thesis: Climate Controversy and Scientific Credibility: The Use of Peer Review in Drafting and Attacking Climate Science and Policy, 1990-2010

Activities: Standards Chairman, Lambda Chi Alpha Fraternity

LEGAL EXPERIENCE**MASSACHUSETTS SECURITIES DIVISION**

Boston, MA

Legal Intern

May 2023 - August 2023

- Protect investors by investigating potential securities laws violations
- Draft settlement offers to resolve violations of securities laws
- Participate in depositions and on-site examinations of records

BOSTON COLLEGE LAW SCHOOL

Newton, MA

Clinical Student, Prosecution Clinic

August 2023-December 2023

Clinical Student, International Human Rights Practicum

January 2023 - May 2023

- Drafted brief on the labor rights of migrants for publication by the Inter-American Human Rights Commission.

Research Assistant, Professor Steven Koh

May 2022 - August 2022

- Researched, analyzed, and summarized trends in criminal and international law to identify issues suitable for scholarly publication.
- Drafted paragraphs and citations for law review publication, "Policing & The Problem of Physical Restraint" (64 B.C. L. REV. 309).

ADDITIONAL EXPERIENCE**USA TRACK & FIELD**

Multiple Locations

Track & Field Referee

September 2017 - present

- Officiate meets at levels ranging from high schools to national championships
- Interpret and enforce rules; determine and communicate results, qualifications, and disqualifications.

NORTHWESTERN INTRAMURAL SPORTS

Evanston, IL

Official Supervisor

September 2018 - June 2021

- Managed university-wide intramural sports program; served as lead official for up to 30 staff members.
- Primary point of contact to handle disputes related to rules violations and interpersonal conflicts.

INTERESTS

Taekwondo, hiking, running, skiing, building Legos, reading nonfiction (esp. history & philosophy), model rocketry, cooking/baking, fantasy sports



Unofficial Grade Sheet

Date Prepared: 6/5/2023

Address: 180 Telford St

Student Name: Robert Gallo

City, State, Zip: Phone Number: Boston,
MA 02135: 774-573-0091

Anticipated Graduation: 2024

Email: galloro@bc.edu

Cumulative GPA: 3.78

Fall Semester 2021

Course Title	Instructor	Credits	Grade
Civil Procedure	Linda Simard	4	A
Contracts	Brian Quinn	4	A-
Law Practice	Jeffrey Cohen	3	A-
Torts	Dean Hashimoto	4	A

Spring Semester 2022

Course Title	Instructor	Credits	Grade
Constitutional Law	Ryan Williams	4	A-
Criminal Law	Steven Koh	4	A-
Intro to Municipal Law	Howard Levine	3	A-
Law Practice	Jeffrey Cohen	2	B+
Property	Daniel Lyons	4	A

Fall Semester 2022

Course Title	Instructor	Credits	Grade
Evidence	Michael Cassidy	4	A
Professional and Moral Responsibility	Daniel Coquillette	3	A
Corporations	Brian Quinn	4	A-
International Law	David Wirth	3	A-

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

**BOSTON
COLLEGE | LAW****Unofficial Grade Sheet***Spring Semester 2023*

Course Title	Instructor	Credits	Grade
Anglo-American Legal Heritage	Daniel Coquillette	3	A-
International Human Rights Practicum	Daniella Urosa	4	A-
State Constitutional Law	Pat Moore & Eric Neyman	2	A
Trial Practice	Paul Chernoff & Edward Ginsburg	2	A-

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidacy of Robert Gallo

Dear Judge Walker:

I am writing to recommend Robert Gallo, Boston College Law School Class of 2024, for a clerkship with your chambers for the 2024-2025 term.

Robert was a student in my Evidence Course during the fall of his second year of study. He received one of the top marks in the course—a straight “A.” I could tell from his penetrating questions-- both during and following class-- that Robert had intellectual curiosity and a solid grasp of even the most complex and nuanced material. His written work on the final exam was exceptionally clear, well organized, and analytically persuasive.

Robert Gallo is an extremely bright, inquisitive, and hard-working young man. He has earned an impressive 3.79 GPA to date BC Law, placing him roughly in the top 5% of a very competitive class. Robert also serves as Executive Notes Editor of the Boston College Law Review, where he has further refined his already strong writing research and analytical skills. I served as an unofficial advisor to Robert on his law review note, where he is examining critiques of Daubert under FRE 702. He has thrown his attention into this project with passion and enthusiasm, as is typical for him.

I am confident that Robert Gallo would do a terrific job for you, and that you would enjoy working with him. Please do not hesitate to contact me at (617) 552-4343 if I can provide you with any further information about this outstanding candidate.

Sincerely,

R. Michael Cassidy
Professor of Law and Dean's Distinguished Scholar

R. Michael Cassidy - michael.cassidy@bc.edu - 617-552-4343

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidacy of Robert Gallo

Dear Judge Walker:

I write to provide my strongest possible recommendation in support of Robert Gallo's application for a clerkship in your chambers. During both first-year Criminal Law class and his time as my Research Assistant, Robert made a lasting impression on me with his uniquely strong research and comprehension abilities. As a result, I am exceptionally confident in his ability to excel as a clerk in your chambers.

I currently serve as Associate Professor of Law R. Gordon Butler Scholar in International Law at Boston University School of Law. Previously, I served as Marianne D. Short and Ray Skowrya Sesquicentennial Assistant Professor of Law at Boston College Law School. In this latter capacity, I first got to know Robert when he was my student in my 1L Criminal Law class. I further developed my relationship with him over the summer of 2022, when he worked as my Research Assistant.

In Criminal Law class, Robert stood out due to his level of preparedness and his willingness to participate in class. He consistently asked incisive questions that transcended the material and demonstrated a uniquely innate understanding of not just the subject matter, but also the underlying justifications for the law and the objections against it. He excelled academically in his other 1L classes as well, further illustrating his exceptional potential in the legal field and his suitability for a clerkship with your chambers.

Robert most impressed me during his time as my RA in summer 2022. During that summer, I worked with him on numerous research projects, most notably my most recent paper entitled Policing and the Problem of Physical Restraint. I would meet with him at least once a week for a few hours to assign research tasks and engage in broader philosophical discussions about law and policy. I first tasked him with conducting a survey of the federal appellate circuits to examine local standards for classifying use of force by police officers. He excelled at this task, identifying a nascent structure in some circuits for analyzing the use of force that no other academic paper had previously described. His research skills are uniquely developed for a second-year law student, as he quickly distilled reams of cases into conclusions that supported my article's arguments. I also tasked Robert with drafting paragraphs reflecting his research for inclusion in my paper. Once again, he excelled at this task, demonstrating strong innate legal writing abilities that made his paragraphs easy to incorporate into my article, with little to no editing required. I also tasked him with several exploratory research projects to determine if several topics were suitable for further research. Once again, he excelled at these, exploring novel and timely disciplines of law to see if further study of them would prove fruitful. He is a uniquely strong researcher and writer, qualities that would make him an exceptional clerk in your chambers.

One of Robert's most valuable qualities is his ability to digest complex information and be an active listener. He researches with unique speed, in large part due to his comprehension skills. Whenever I described my research to him, he listened intently and asked questions that demonstrated his understanding of not only his task, but also the larger context that the research existed within. I never needed to explain something twice to him: he immediately grasped the complex nature of my research and illustrated his understanding by producing excellent work each time. He would provide an immediate workload benefit to your chambers due to these already developed skills that are so important in chambers work.

More personally, Robert was a pleasure to work with. I enjoyed our weekly meetings and our discussions, which spanned beyond the specific research questions I posed and touched on other areas of law and policy. Robert always was willing and able to discuss these topics even without preparation. He always submitted his work on time and completed each task I assigned beyond my expectations.

In sum, Robert would be an excellent clerk in your chambers. He has deeply impressed me with his talent and potential, and I expect him to thrive in the clerkship environment. His curiosity, enthusiasm, and ability are notable and would positively impact your chambers. If you have any questions about my recommendation or if I can be of any further assistance, please do not hesitate to reach out.

Sincerely,

Steven Koh
Associate Professor of Law, Boston University
R. Gordon Butler Scholar in International Law
T 617-353-2212 F 617-353-3077
Email: koh@bu.edu

Steven Koh - kohst@bc.edu

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidacy of Robert Gallo

Dear Judge Walker:

It is my very great honor and privilege to recommend Mr. Robert Gallo, an applicant to be your law clerk. Mr. Gallo has been my student in two of my courses and is currently enrolled for a third. He has been one of the most outstanding students in all of the courses, and also one of the most outstanding students in my long experience as a law teacher. His contributions in class and in the examinations show a genuine original mind, which is constantly taking new approaches to difficult problems. He also has an extremely accurate intellect and is capable of first-class legal analysis.

Mr. Gallo graduated from Northwestern University with a Bachelor of Arts in History and Earth and Planetary Science with an outstanding GPA of 3.78/4.00, which resulted in his being given Departmental Honors in History. During that time, he wrote a very compelling thesis on climate controversy and scientific credibility, which demonstrates his excellent writing skills.

At Boston College Law School, he has continued his emphasis on writing and research, being elected to the Boston College Law Review and becoming Executive Comment Editor for the Review. At Boston College, he not only has done superb work for the Law Review, but has accumulated a GPA of 3.79/4.00, which would put him close to the top of his class.

He also has very valuable practical experience. This summer he will be a legal intern in the Massachusetts Security Division in Boston, and he has also been a clinical student in both our Prosecution Clinic and our International Human Rights Clinic. He served as a Research Assistant for Professor Steven Koh, an outstanding scholar.

Mr. Gallo has a fascinating background in athletics. He is an Official Track and Field Referee for the U.S. Track and Field Organization. In this capacity he has served as an official for major track events, including National Championships. This builds on his experience at Northwestern, where he was the Official Supervisor for Northwestern's Intramural Sports Program and was the lead official for up to 30 different staff members in managing the university-wide sports program.

Mr. Gallo would be a terrific new member for your chambers. He is an excellent writer and has first-class research skills. But he also has a great inherent sense of fairness, and experience in resolving difficult disputes. He has a genuinely original and entertaining intellect, and is a thoroughly delightful person. My recommendation is as enthusiastic as I can make it!

If you have any further questions, please do not hesitate to call me at 617-642-8130.

Yours sincerely,

Daniel R. Coquillette
Former Dean and J. Donald Monan, S.J., University Professor, Boston College Law School
Charles Warren Visiting Professor of American Legal History, Harvard Law School
Consultant, Standing Committee on Rules, Judicial Conference of the United States

Daniel Coquillette - coquill@bc.edu - 617-552-8650

Robert Gallo

galloro@bc.edu | 774-573-0091

Writing Sample

The following Writing Sample was prepared as part of the Writing Competition for membership on the Boston College Law Review. For the Competition, I was assigned a closed universe of cases and a stipulation of facts and was instructed to write a memorandum raising an entrapment defense to the charge of selling a controlled substance. The details of the case are described in the Sample. For the purposes of the competition, certain formatting and citation rules were implemented. I received no external feedback on this work.

STATE OF MINNESOTA
COUNTY OF BLUE EARTH

**DISTRICT COURT
FIFTH JUDICIAL DISTRICT**

STATE OF MINNESOTA,

Plaintiff,

VS.

MICHAEL VARNSEN,

Defendant.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
DISMISS**

File No.: 22-1695

The Defendant, Michael Varnsen, has moved this honorable Court to dismiss the above-captioned complaint charging him with 5th Degree Sale of a Controlled Substance in violation of Minnesota Statute 152.025. The Defendant moves the Court to dismiss the complaint on the grounds that he was entrapped by Detective Daniel Landry of the Mankato Police Department. Pursuant to Rules 26.01 and 9.02 of the Minnesota Rules of Criminal Procedure, the Defendant has waived his right to present the entrapment defense to a jury and now submits the defense to the Court for its determination. To expedite the Court's determination of this motion, the Defendant and the State have stipulated to certain facts for the purpose of the motion; the parties have filed the stipulation with the Court.

Because Detective Landry induced the Defendant to commit the crime with which he is charged and because the State cannot prove beyond a reasonable doubt that the Defendant was predisposed to commit that crime, this Court must dismiss the complaint against the Defendant.

STATEMENT OF THE CASE

This case exemplifies the need for the entrapment defense and its role in protecting individuals from committing crime at the insistence of the government. The state has charged the Defendant, Michael Varnsen, with Fifth Degree Sale of a Controlled Substance, stemming from an incident that occurred on March 21, 2022. Stip. ¶ 4. On that date, Detective Landry of the Mankato Police Department proceeded to Moreland Avenue while undercover to investigate possible marijuana sales based on an informant's report. Id. ¶¶ 4-5. While on Moreland Ave. at approximately 3:45 p.m., Det. Landry saw Mr. Varnsen standing outside near his residence. Id. ¶ 6. Det. Landry had never met Mr. Varnsen before and had no information linking him to any marijuana sales. Id. ¶ 7. Det. Landry approached Mr. Varnsen while wearing a wire and solicited the purchase of marijuana from him. Id. ¶ 8. When Mr. Varnsen responded negatively to the solicitation, Det. Landry persisted. Id. When Mr. Varnsen again refused, Det. Landry continued his patrol of the area. Id. ¶¶ 8-9. While on his patrol, Det. Landry encountered no evidence of marijuana sales in the neighborhood, leading him to return to Mr. Varnsen after approximately forty-five minutes. Id. ¶¶ 9-11. When Det. Landry again solicited Mr. Varnsen, Mr. Varnsen again refused to sell marijuana to the Detective. Id. ¶ 12. During this conversation, Det. Landry claimed to need the marijuana to deal with PTSD. Id. ¶ 12. Only after being asked to sell marijuana five times did Mr. Varnsen agree to help Det. Landry buy marijuana. Id. ¶ 12. As a result, Mr. Varnsen made a phone call before leading Det. Landry to a house, which Mr. Varnsen entered. Id. ¶¶ 13-16. Mr. Varnsen returned from the building with the marijuana requested by Det. Landry, a quantity of seven grams, and sold it to him for eighty dollars. Id. ¶¶ 17-19. As a result, Det. Landry placed Mr. Varnsen under arrest. Id. ¶ 18.

ARGUMENT

This Court should grant Defendant’s motion to dismiss on the grounds of entrapment because (1) the preponderance of evidence demonstrates that the Government induced Mr. Varnsen to commit the charged offense, and (2) the State has failed to meet its burden of demonstrating beyond a reasonable doubt that Mr. Varnsen was predisposed to commit the offense of selling marijuana.

I. The Entrapment Defense

The entrapment defense prevents the police from “ensnar[ing] the innocent and law-abiding into the commission of a crime.” *State v. Poague*, 72 N.W.2d 620, 624 (Minn. 1955) (quoting *Newman v. United States*, 299 F. 128, 131 (4th Cir. 19XX)). While it is not unlawful for the government to provide someone with the opportunity to commit a crime, the government may not induce an individual to commit a crime she otherwise lacks the intent to commit. *See State v. Grilli*, 230 N.W.2d 445, 451-52 (Minn. 1975). The entrapment defense ultimately acts as a limit on the state to prevent the government from manufacturing offenses or placing criminal intent in the minds of citizens. *See id.*

To establish the entrapment defense, the defendant must show that she was not predisposed to commit the charged offense, and that the police induced the defendant to commit the offense. *Id.* at 452; *see also State v. Olkon*, 299 N.W.2d 89, 107 (Minn. 1980). If the state can demonstrate the defendant’s predisposition to commit the crime, then the entrapment defense fails even if the defendant was induced. *Grilli*, 230 N.W.2d at 452. However, if the defendant shows she was entrapped, then further prosecution is barred, and any conviction is vacated. *Id.* at 456.

II. The Government Induced Mr. Varnsen to Sell Marijuana

The actions of Detective Landry induced Mr. Varnsen to sell marijuana. A defendant is induced to commit a crime if the police badgered, persuaded, or pressured the defendant to

commit the offence. *Olkon*, 299 N.W.2d at 107. If the police repeatedly ask a defendant to commit an offense after her initial refusal, then they have badgered the defendant so as to constitute inducement. *State v. Johnson*, 511 N.W.2d 753, 755 (Minn. Ct. App. 1994) Mere solicitation of a crime is not enough to constitute inducement. *Olkon*, 299 N.W.2d at 107. Furthermore, the police can misrepresent the truth and use trickery without causing inducement, so long as they only provide the defendant an opportunity to commit the crime. *Poague*, 72 N.W.2d at 625.

If the defendant initiated the offense without being solicited by the police, then she was not induced. In *State v. Bauer*, the defendant's mother was solicited at her workplace to sell drugs by a police informant. 776 N.W.2d 462, 468-69 (Minn. Ct. App. 2009). While she declined, she informed her son about the opportunity to make a drug sale. *Id.* at 469. As a result, the defendant drove to his mother's workplace to sell marijuana. *Id.* Furthermore, the defendant returned to the store to initiate an unsolicited sale of a different drug, ecstasy. *Id.* It was the defendant's mother, not the police, who solicited the defendant to sell drugs. Even if they police had induced the defendant, his return to the store to commit another offense was entirely his own initiative. As a result of the defendant's actions and the role of his mother in communicating the opportunity for the sale, the court refused to find inducement. *Id.* at 470.

The police can solicit the commission of a crime without entrapping a defendant. In *Poague*, the defendant ran a service purportedly matching men and women for dates. *Poague*, 72 N.W.2d at 622. An undercover police officer approached the defendant and asked her to find a girl for him before he left town in a few hours. *Id.* at 623. When the defendant was unable to find a girl, she offered to "take care of [the officer] myself . . ." for the price of \$30, and then began to undress while telling the officer to use a prophylactic for the upcoming

sexual activity. *Id.* The defendant was later convicted of prostitution for this incident. *Id.* at 622. While she claimed entrapment, the court pointed out that the officer had only provided her with the chance to commit a crime, nothing more. *Id.* at 625. He had not pressured her in any way to prostitute herself; indeed, the record showed she was quite willing to commit the offense. *Id.* Furthermore, the officer's false story used to solicit the defendant merely set the trap and did not go far enough to pressure her. *Id.* As a result, she was not induced to commit the offense. *Id.* Similarly, in *Lombida*, the defendant sold cocaine to undercover officers on multiple occasions, indicating a willingness to engage with the officer after only a solicitation. *State v. Lombida*, 2012 WL 1380264 at 3 (Minn. Ct. App. 2012). For inducement to occur, the police must do more than just solicit a crime.

When the police continue to badger a defendant who refused to commit an offense to pressure him to do so, then inducement has occurred. In *Johnson*, the defendant was approached by a friend, secretly a police informant, who wanted to sell marijuana. 511 N.W.2d at 754. The defendant refused to buy marijuana. *Id.* Undeterred, the informant continued to call the defendant in an attempt to sell him drugs, offering increasingly good prices. *Id.* After several calls and a meeting, the defendant agreed to buy the drugs on behalf of a friend and was arrested upon completion of the sale. *Id.* Because the police continued to badger the defendant even after he refused to buy marijuana, the court found inducement. *Id.* at 755.

The inducement element of entrapment is satisfied only if the police go beyond the solicitation of an offense by badgering, pressuring, or otherwise persuading a defendant to commit a crime. *Olkon*, 299 N.W.2d at 107; *see also Poague*, 72 N.W.2d at 622. If the police continue to pressure a defendant to commit a crime after his initial refusal, then the inducement element is satisfied. *Johnson*, 511 N.W.2d at 755.

Mr. Varnsen was induced to sell marijuana by law enforcement because Det. Landry continued to badger him to sell the drugs after he initially refused to do so. *See id.* When Det. Landry first approached Mr. Varnsen on the street near his residence, he asked if Mr. Varnsen knew where to buy marijuana. Stip. ¶ 8. Mr. Varnsen answered negatively, and when told that someone in the area was dealing weed, again denied knowledge. *Id.* After forty-five minutes of patrols, Det. Landry returned to Mr. Varnsen and again requested weed from him. Id. ¶¶ 9-12. Mr. Varnsen again stated his unwillingness to sell marijuana. Id. ¶ 12. Only in response to Det. Landry's fifth query did Mr. Varnsen agree to contact a third individual who could provide marijuana. *Id.* Mr. Varnsen did not initiate the offense, as he never approached Det. Landry in an attempt to sell marijuana. *See Bauer*, 776 N.W.2d at 470. When Det. Landry persisted after his trap had failed, he went beyond soliciting Mr. Varnsen and instead induced him. *See Poague*, 72N.W.2d at 625 (requiring more than a solicitation for inducement to occur); *see also Johnson*, 511 N.W.2d at 755. Just as in *Johnson*, an undercover informant continued to pressure the defendant to engage in a drug transaction despite continued refusals, until eventually the defendant gave in to the pressure and made the transaction. *Johnson*, 511 N.W.2d at 754. Such repeated conduct by a police officer constitutes badgering, and therefore inducement. *Id.* at 755. As a result, the court should find that Det. Landry induced Mr. Varnsen to sell marijuana.

III. Mr. Varnsen Was Not Predisposed to Sell Marijuana

Mr. Varnsen is not predisposed to sell marijuana and did so exclusively as a result of Detective Landry's inducement. If a defendant is predisposed to commit a crime, then entrapment is not a defense even in the presence of inducement. *Grilli*, 230 N.W.2d at 452. A defendant is predisposed to commit an offense if she actively solicited to commit the crime, if

she has prior criminal convictions, if she engaged in past criminal activity without a conviction, or if she has a criminal reputation. *Id.* Criminal convictions only show a predisposition if they were recent enough to connect temporally with the charged conduct. *See Johnson*, 511 N.W.2d at 755; *see also In re G.D.*, 473 N.W.2d 878, 884 (Minn. Ct. App. 1991). A predisposition can also be shown when the defendant readily responds to a solicitation to commit a crime, mitigating the state's actions. *Olkon*, 299 N.W.2d at 107-08. Furthermore, the defendant must be predisposed to commit the crime before she is approached by government agents. *Johnson*, 511 N.W.2d at 755.

A defendant's prior criminal activity, with or without a conviction, can show a predisposition. In the case of *G.D.*, the defendant was charged with selling drugs to undercover police officers who approached the defendant. *G.D.*, 473 N.W.2d at 879. Prior to this transaction, the police observed the defendant engaging in other drug transactions with other dealers, even as the defendant explained his drug business to the officers in justifying his delays of the sale. *Id.* at 884. The defendant's pattern of prior criminal behavior, all of which related closely to the charged offense in both time and activity, was sufficient to establish a predisposition, even though he was never even charged for those transactions. *Id.*

However, the defendant's criminal activity must have been recent to establish a predisposition. In *Johnson*, the defendant had been involved in marijuana sales over twenty years before the instant offense. *Id.* at 754. The temporal gap was too great for the state to use those sales as evidence of a predisposition. *Id.* at 755. Even prior drug use by itself cannot establish predisposition. In the *E.E. B.* case, the defendant was a regular drug user who arranged a drug sale to a police informant. *In re E.E. B.*, 2009 WL 1374313 at 1 (Minn. Ct. App. 2009). The defendant's drug use could not show her predisposition to sell the drugs, in

large part because intent to use drugs does not translate to an intent to sell drugs. *Id.* at 2 (finding that the question of predisposition is very similar to the question of intent). As a result, the state can only show the defendant's predisposition using criminal activity if the activity occurred recently and suggests intent to commit the charged offense. *See id.*; *see also Johnson*, 511 N.W.2d at 755.

A defendant is also predisposed to commit a crime if she readily responds to solicitations to commit the crime. In *Olkon*, the defendant, an attorney, engaged in a health insurance fraud scheme by taking cases from people with fraudulent injuries and receiving settlements for these fake injuries. 299 N.W.2d at 93. Undercover police posed as victims of a fake accident and informed the defendant of their desire to get an insurance settlement for injuries despite no injuries existing. *Id.* at 94. The defendant then proceeded with the claim despite knowing the fraudulent nature of the injury. *Id.* at 93. During the process, the undercover officer offered the defendant an opportunity to not take the case to avoid committing the fraud, an opportunity the defendant declined. *Id.* at 108. The defendant's explicit willingness to proceed with the crime when offered the chance to back out illustrated his readiness to commit insurance fraud, establishing his predisposition. *Id.*

A criminal reputation can also signify a predisposition. In the *Potter* case, the defendant's name appeared on a list of drug traffickers supplied by a jailhouse informant, which supported reports from other informants about the defendant's criminal activity. 1998 WL 171346 at 1 (Minn. Ct. App. 1998). As a result of this information, the police arranged for an informant to buy drugs from the defendant which resulted in the defendant selling the informant drugs, leading to his arrest. *Id.* Though he raised an entrapment defense, the defendant was found to be predisposed to commit the crime in part due to his criminal

reputation. *Id.* at 3. By being included on the informant's list and being suspected in the community of involvement in the drug trade, the defendant acquired a criminal reputation, which was further supported by a prior conviction for theft and testimony from the defendant's girlfriend about his continuing drug use. *Id.* The combination of these factors indicated the defendant's criminal reputation and established his predisposition to commit the crime.

There is no evidence showing a criminal predisposition by Mr. Varnsen. First, he lacks a relevant criminal history or reputation. Though he has prior criminal convictions for marijuana possession and theft, the convictions occurred thirteen and twelve years ago, respectively. Stip. ¶ 3. Only recent criminal convictions can support a finding of a predisposition, and courts have found recency on the scale of only weeks or months, not decades. *See Johnson*, 511 N.W.2d at 755 (finding no predisposition when twenty years have elapsed between past criminality and the instant offense); *see also G.D.*, 473 N.W.2d at 884 (finding a predisposition from criminal behavior within a month of the instant offense). Furthermore, a drug possession conviction alone is not enough to show a predisposition to sell drugs, while theft is too dissimilar to drug dealing to show a predisposition. *See E.E. B.*, 2009 WL 1374313 at 2. Mr. Varnsen lacks a relevant criminal history to establish his predisposition.

Second, Mr. Varnsen was approached at random on the street, without any informant or community member suggesting he was involved in the drug business. Stip. ¶¶ 6-7. Though the street was known to host marijuana sales, nothing linked Mr. Varnsen to the ongoing criminality before Det. Landry approached him. Id. ¶¶ 5-7. Furthermore, Mr. Varnsen never even approached Det. Landry, let alone offer to conduct a drug transaction. Id. ¶¶ 6-12. Det. Landry, through his own initiative, initiated the solicitation. Id. Without any information linking Mr. Varnsen to criminal activity, the state cannot establish a criminal reputation. *See*

Potter, 1998 WL 171346 at 3 (finding a criminal reputation for a defendant who was known to informants and the community to be involved in the drug trade). The transaction that eventually occurred cannot establish a criminal reputation by the defendant since a predisposition must be established before the police approach a defendant. *Johnson*, 511 N.W.2d at 755. Mr. Varnsen does not have a criminal reputation that could be used to establish a predisposition.

Finally, Mr. Varnsen did not readily respond to Det. Landry's solicitations to commit the offense. Mr. Varnsen refused Det. Landry's first four solicitations for marijuana spread over the course of forty-five minutes, assenting on the fifth attempt when Det. Landry offered a sob story to gain Mr. Varnsen's empathy. Stip. ¶¶ 8-12. Only an immediate positive response by a defendant to a criminal solicitation can show a predisposition by ready response. *See Olkon*, 299 N.W.2d at 108 (finding that a defendant who immediately agrees to criminal conduct has a predisposition by ready response); *see also Johnson*, 511 N.W.2d at 755-56 (holding that a defendant who refuses the first solicitation was not predisposed under any theory, including ready response). Furthermore, Mr. Varnsen did not even have marijuana on him when Det. Landry approached him, needing to go to another residence to find some. Stip. ¶¶ 13-17. As a matter of fact, it was impossible for him to readily respond to Det. Landry's solicitation because he lacked inventory on his person to do so. There is simply no evidence that Mr. Varnsen readily responded to a criminal solicitation or has a predisposition.

Mr. Varnsen lacks a criminal history of selling marijuana, has no criminal reputation as a marijuana dealer, and did not readily respond to Det. Landry's solicitation to sell marijuana. As a result, Mr. Varnsen was not predisposed to sell marijuana, and his entrapment defense may proceed. *Grilli*, 230 N.W.2d at 452.

IV. Conclusion

Mr. Varnsen was entrapped by Det. Landry. Though the court is generally reluctant to find entrapment, the behavior by Det. Landry and Mr. Varnsen's lack of a relevant criminal history or reputation justifies allowing the entrapment defense. *See Johnson*, 511 N.W.2d at 755. Det. Landry badgered Mr. Varnsen by asking him five times to sell marijuana, going beyond merely providing him with the chance to commit the crime and instead inducing the offense. Stip. ¶¶ 8-12; *see also Johnson*, 511 N.W.2d at 755; *see also Poague*, 72 N.W.2d at 625. Additionally, Mr. Varnsen is not predisposed to sell marijuana. He has no criminal reputation, as evidenced by the lack of information linking him to marijuana dealing prior to his encounter with Det. Landry. Stip. ¶¶ 6-7; *see also Potter*, 1998 WL 171346 at 3. His prior criminal record cannot establish a predisposition since the charged crimes occurred long ago and do not directly relate to selling marijuana. Stip. ¶ 3; *see also Johnson*, 511 N.W.2d at 755. Furthermore, he did not readily respond to Det. Landry's attempts to buy marijuana since it took five attempts before he assented. *See Olkon*, 299 N.W.2d at 108; *see also Johnson*, 511 N.W.2d at 755-56. Det. Landry's actions went far beyond just setting a trap to catch a criminal. Instead, he pressured Mr. Varnsen into committing a crime he was not predisposed to commit, resulting in entrapment. As a result, the court should GRANT Mr. Varnsen's Motion to Dismiss.

Applicant Details

First Name	Caitlyn
Middle Initial	N
Last Name	Galvin
Citizenship Status	U. S. Citizen
Email Address	caitlyn.galvin@nyu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>240 Mercer Street, Room 1606B</div> <div>City</div> <div>New York</div> <div>State/Territory</div> <div>New York</div> <div>Zip</div> <div>10012</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	9782101750

Applicant Education

BA/BS From	Boston College
Date of BA/BS	May 2021
JD/LLB From	New York University School of Law
	https://www.law.nyu.edu
Date of JD/LLB	May 22, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	New York University Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships No

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Kenji Yoshino, David Glasgow and
david.glasgow@nyu.edu;kenji.yoshino@nyu.edu
Glasgow: 212 998 6018

Kahan, Marcel
marcel.kahan@nyu.edu
212 998-6268

Schachner, Elliot
elliot.schachner@usdoj.gov
718-254-6053

Weissmann, Andrew
andrewweissmann@gmail.com
917-575-2171

This applicant has certified that all data entered in this profile and any application documents are true and correct.

240 Mercer Street, #1606B
New York, NY 10012
(978) 210-1750
caitlyn.galvin@nyu.edu

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers for the 2024 term or any subsequent term. I am a rising third-year law student at New York University School of Law, a Senior Executive Editor for the *New York University Law Review*, and a Summer Associate in the Boston office of WilmerHale. I have a strong desire to serve the federal court system and build on the incredible experience I had as an extern with the United States Attorney's Office (E.D.N.Y.). It would be an honor to have the opportunity to serve as one of your clerks.

My legal writing skills and diligent work ethic will assist you in your demanding work. As an intern for the Massachusetts Attorney General, I wrote executive determinations issued to state and local public bodies. With the U.S. Attorney's Office, I drafted multiple legal memoranda and assisted in drafting briefs opposing motions to dismiss and motions for summary judgment. For instance, I aided in the government's lawsuit against a major pharmaceutical distributor by analyzing recent changes in the Supreme Court's definition of unconstitutional vagueness and its implications for the Controlled Substances Act. Finally, my position as a Senior Executive Editor on *Law Review* requires strong attention to detail in proofreading texts for grammar and Bluebook errors.

Please find enclosed copies of my resume, transcripts, writing samples, and letters of recommendation. This past semester, I served as a Research Assistant to Professors Kenji Yoshino and David Glasgow via the Meltzer Center for Diversity, Inclusion, and Belonging. I was also a student in two of Professor Andrew Weissmann's courses, Criminal Procedure and National Security Law. Professor Marcel Kahan taught my Corporations class. Lastly, Special Assistant to the Attorney General Elliot Schachner served as my supervisor during my externship in the USAO. Please find their contact information here:

Professor Andrew Weissmann: (212) 998-6216 (assistant); andrew.weissmann@nyu.edu
Professor Kenji Yoshino: (212) 998-6421; kenji.yoshino@nyu.edu
Professor David Glasgow: (212) 998-6018; david.glasgow@nyu.edu
Professor Marcel Kahan: (212) 998-6268; marcel.kahan@nyu.edu
Special Assistant to the Attorney General Elliot Schachner: (718) 245-7000; elliot.schachner@usdoj.gov

Professor Mindy Nunez Duffourc, who instructed my first-year Lawyering course, is happy to speak with you as a reference. Her contact information is as follows:

Professor Mindy Nunez Duffourc: (504) 239-1877; mnunezduffourc@gmail.com

Thank you for your consideration. Please let me know if you need any further information.

Respectfully,
/s/
Caitlyn Galvin

CAITLYN N. GALVIN

240 Mercer Street, #1606B
New York, NY 10012
(978) 210-1750 | caitlyn.galvin@nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Candidate for J.D., May 2024

Unofficial GPA: 3.52

Honors: *New York University Law Review*, Senior Executive Editor of Printing

Activities: *Supreme Court Forum*, Staff Editor
BARBRI Global, Head Student Ambassador

BOSTON COLLEGE, Chestnut Hill, MA

B.A. in Political Science and History, *summa cum laude*, May 2021

Honors: Phi Beta Kappa
Advanced Standing Program – *degree completed in three years*
Political Science Honors Program

Activities: Research Fellow, Professor Ali Banuazizi

EXPERIENCE

PROSECUTION EXTERNSHIP, NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Extern, United States Attorney for the Southern District of New York, Spring 2024

WILMER CUTLER PICKERING HALE AND DORR, L.L.P., Boston, MA

2L Summer Associate, Summer 2023

Participate in all aspects of complex litigation matters, including a major securities class action. Draft portions of a summary judgment opposition brief in a *pro bono* matter regarding a prisoner's 42 U.S.C. § 1983 claim.

GOVERNMENT CIVIL LITIGATION EXTERNSHIP, NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Extern, United States Attorney for the Eastern District of New York, January 2023 – May 2023

Researched recent changes in the Supreme Court's definition of unconstitutional vagueness, how lower courts have interpreted and applied the precedent, and its implications for the constitutionality of the Controlled Substances Act (CSA). Prepared a memorandum summarizing these developments, outlining unresolved questions, and advising how the government could oppose a pending motion to dismiss. Assisted attorneys in performing related research and drafting findings letters pursuant to civil rights investigations. Observed settlement conferences and depositions.

PROFESSORS KENJI YOSHINO AND DAVID GLASGOW, NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Research Assistant, Meltzer Center for Diversity, Inclusion, and Belonging, January 2023 – May 2023

Researched the Supreme Court's pending affirmative action decisions and their potential impact on the legality of diversity, equity, and inclusion (DEI) initiatives under Title VII. Researched and prepared a memorandum summarizing prior scholarship, analyzing relevant briefs and oral arguments, projecting possible holdings, and discussing the legality of various DEI initiatives under each holding. Assisted Professors Yoshino and Glasgow in advising companies on how to adjust their approach to diversity, equity, and inclusion to comply with the Court's decisions.

OFFICE OF ATTORNEY GENERAL MAURA HEALEY, Boston, MA

Legal Intern, Division of Open Government, June 2022 – August 2022

Assisted attorneys in enforcing the Open Meeting Law. Addressed claims by reviewing complaints, conducting factual investigations, performing legal research, and drafting determinations. Corresponded with public bodies and complainants to evaluate the validity of claims. Accompanied attorneys to hearings in Massachusetts Superior Court.

BLUE SKY TOWERS, LLC, North Reading, MA

Legal Intern, June 2021 – August 2021

Conducted legal research and prepared memoranda on commercial real estate issues. Assisted in preparing and reviewing leases and amendments to leases. Worked closely with the General Counsel to prepare and file litigation documents.

ADDITIONAL INFORMATION

Enjoy hiking with family and attending Boston College, Bruins, and Patriots games. Avid Marvel and Star Wars fan. Well versed in Adobe Photoshop. Additional experience as a store associate at Marshalls (June 2018 – February 2020).

Name: Caitlyn N Galvin
 Print Date: 06/11/2023
 Student ID: N11432038
 Institution ID: 002785
 Page: 1 of 1

**New York University
 Beginning of School of Law Record**

Fall 2021

School of Law Juris Doctor Major: Law				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Mindy Nunez Duffourc			
Criminal Law		LAW-LW 11147	4.0	B+
Instructor:	Anna N Roberts			
Torts		LAW-LW 11275	4.0	A-
Instructor:	Daniel Jacob Hemel			
Procedure		LAW-LW 11650	5.0	B+
Instructor:	Troy A McKenzie			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Martin Guggenheim			
		AHRS	EHSR	
Current		15.5	15.5	
Cumulative		15.5	15.5	

Complex Litigation	LAW-LW 10058	4.0	B+
Instructor:	Samuel Issacharoff		
	Arthur R Miller		
Government Civil Litigation Externship - Eastern District	LAW-LW 10253	3.0	CR
Instructor:	Dara A. Olds		
Government Civil Litigation Externship - Eastern District Seminar	LAW-LW 10554	2.0	A-
Instructor:	Dara A. Olds		
Evidence	LAW-LW 11607	4.0	A-
Instructor:	Daniel J Capra		
National Security Law	LAW-LW 12256	2.0	A
Instructor:	Ryan Goodman		
	Andrew Weissmann		
Research Assistant	LAW-LW 12589	1.0	CR
Instructor:	Kenji Yoshino		
		AHRS	EHSR
Current		16.0	16.0
Cumulative		60.0	60.0
Staff Editor - Law Review 2022-2023			

End of School of Law Record

Spring 2022

School of Law Juris Doctor Major: Law				
Constitutional Law		LAW-LW 10598	4.0	B+
Instructor:	Melissa E Murray			
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Mindy Nunez Duffourc			
Legislation and the Regulatory State		LAW-LW 10925	4.0	B
Instructor:	Samuel J Rascoff			
Contracts		LAW-LW 11672	4.0	A-
Instructor:	Clayton P Gillette			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Martin Guggenheim			
Financial Concepts for Lawyers		LAW-LW 12722	0.0	CR
		AHRS	EHSR	
Current		14.5	14.5	
Cumulative		30.0	30.0	

Fall 2022

School of Law Juris Doctor Major: Law				
Criminal Procedure: Fourth and Fifth Amendments		LAW-LW 10395	4.0	A-
Instructor:	Andrew Weissmann			
Corporations		LAW-LW 10644	5.0	A-
Instructor:	Marcel Kahan			
Professional Responsibility and the Regulation of Lawyers		LAW-LW 11479	2.0	A-
Instructor:	John P. Cronan			
Class Actions Seminar		LAW-LW 12721	2.0	A-
Instructor:	Jed S Rakoff			
Class Actions Seminar: Writing Credit		LAW-LW 12727	1.0	A
Instructor:	Jed S Rakoff			
		AHRS	EHSR	
Current		14.0	14.0	
Cumulative		44.0	44.0	

Spring 2023

School of Law
 Juris Doctor
 Major: Law

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	All other JD and LLM (Non-Mandatory)
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	Maximum for A tier = 31%
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	Maximum grades above B = 57%
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

<i>Pomeroy Scholar:</i>	Top ten students in the class after two semesters
<i>Butler Scholar:</i>	Top ten students in the class after four semesters
<i>Florence Allen Scholar:</i>	Top 10% of the class after four semesters
<i>Robert McKay Scholar:</i>	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021



Meltzer Center
for Diversity, Inclusion,
and Belonging
NYU School of Law

May 19, 2023

RE: Caitlyn Galvin, NYU Law '24

Your Honor:

It is our great pleasure to recommend Caitlyn Galvin, a rising 3L student at NYU School of Law, for a clerkship in your chambers.

We lead a research center at NYU School of Law focused on advancing interdisciplinary research on issues of diversity, equity, and inclusion (DEI). Caitlyn worked with us as a research assistant in spring 2023 on a project analyzing the implications of the U.S. Supreme Court's decision in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College (SFFA)* for workplace DEI efforts. Specifically, we asked Caitlyn to assume the Court would rule that affirmative action violates the Equal Protection Clause, and to examine how such a finding might affect affirmative action and other race-conscious DEI programs under Title VII of the Civil Rights Act of 1964.

Caitlyn's research culminated in a comprehensive memo, which analyzed the distinct strands of affirmative action doctrine under Title VII and the Equal Protection Clause, explored multiple potential holdings in *SFFA*, and, most importantly, applied such holdings to a variety of DEI practices. These practices included hiring and promotion targets, the use of identity characteristics as "tiebreakers," expanded recruitment, anti-bias training, compensation tied to diversity goals, affinity groups, and mentorship programs. She concluded that over the long term, a ruling that outlaws affirmative action in higher education could lead to limits on affirmative action in employment, which would effectively ban all set-asides and tiebreakers while preserving expanded recruitment, anti-bias training, and other DEI initiatives.

Caitlyn's memo was thorough, rigorous, and cogent, made all the more impressive by the vague and inchoate nature of the question she was asked to examine. In effect, we invited her to predict what the Court might rule, then predict what implications such a ruling might have for an separate statutory framework, and then to apply those implications to a range of disparate DEI programs, not all of which can properly be characterized as affirmative action. This task could have led to a scattershot set of reflections, but Caitlyn gave us a well-organized and incisive analysis grounded in the relevant case law and secondary literature. Our center is hosting a forum on the subject of Caitlyn's memo in the near future, and her work will prove to be an indispensable resource as we prepare for that session.

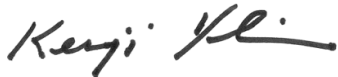
Caitlyn Galvin, NYU Law '24
May 19, 2023
Page 2

In addition to her work with us, Caitlyn has served on the *New York University Law Review*, first as a Staff Editor and subsequently as Senior Executive Editor of Printing. Her training from this experience is evident in the quality of Caitlyn's writing, which is closely reasoned and technically meticulous. It is no surprise that she intends to pursue a career in litigation, where her talent for legal analysis and argumentative rigor will serve her extremely well.

Caitlyn was a pleasure to have on our research team. She has the right mix of research and writing ability, critical thinking capacity, and interpersonal skill to thrive in a demanding clerkship environment. We strongly recommend her to your chambers.

If we can be of any further assistance, please contact us at the telephone numbers or email addresses below.

Sincerely,



Kenji Yoshino
Chief Justice Earl Warren Professor of
Constitutional Law
Director, Meltzer Center for Diversity,
Inclusion, and Belonging
NYU School of Law
kenji.yoshino@nyu.edu
212 998 6421



David Glasgow
Executive Director
Meltzer Center for Diversity, Inclusion,
and Belonging
Adjunct Professor of Law
NYU School of Law
david.glasgow@nyu.edu
212 998 6018



New York University

A private university in the public service

School of Law
Faculty of Law

40 Washington Square South, Room 332
New York, New York 10012-1099
Telephone: (212) 998-6268
Facsimile: (212) 995-4341
Email: marcel.kahan@nyu.edu

Marcel Kahan

George T. Lowy Professor of Law

June 2, 2023

RE: Caitlyn Galvin, NYU Law '24

Your Honor:

I am writing to recommend Caitlyn Galvin for a clerkship with you.

I know Caitlyn from the Corporations class she took with me in the fall of 2022. Despite the large class size (over 90 students), I remember Caitlyn well. Her contributions enriched the class discussion and showed her strong grasp of doctrine and analytical skills. Caitlyn did very well in the course, earning a grade of A-. Her overall performance, both in the classroom and on the exam, places her within the top 10% of the students in the class.

During her second year at law school, Caitlyn pursued a rigorous and litigation-focused curriculum, including classes in Criminal Procedure, Class Actions, Complex Litigation and Evidence as well as a Civil Litigation Externship in the Eastern District of New York in addition to my Corporations course. Her performance was excellent, with Caitlyn earning an A- average over the year. In addition, Caitlyn has been a highly engaged NYU law student. She is the Senior Executive Editor on our flagship NYU Law Review and was a Staff Editor at the Supreme Court Forum.

On top of that, Caitlyn has significant writing experience. During college, Caitlyn honed her writing and analytical skills by participating in multiple Model UN competitions. Between college and law school, she served as a legal intern where her tasks included writing memoranda on commercial real estate issues. This academic year, Caitlyn wrote an excellent seminar paper comparing class actions and *parens patriae* actions, which I reviewed in the context of writing this recommendation. The paper, which Caitlyn plans to convert into a law review note, deals with an original and interesting topic and the clarity of the composition as well as the quality of the analysis greatly exceeds the clarity and quality of a typical student-authored paper.

In short, I believe that Caitlyn would make an outstanding clerk and I recommend her highly.

If I can do anything else to be of assistance, please feel free to call or write me.

Sincerely,

Marcel Kahan
George T. Lowy Professor of Law



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

May 16, 2023

Re: Caitlyn Galvin

Your Honor:

Please accept this letter in strong support of the clerkship application of Caitlyn Galvin. Caitlyn worked in the Civil Division of the United States Attorney's Office for the Eastern District of New York under my supervision as a student intern during the spring term of 2023.

During her internship, Caitlyn performed immensely helpful legal research on complicated legal issues. She prepared two extensive research memoranda dealing with a defense of vagueness raised by the defendants in a major, still-ongoing civil enforcement action commenced by the United States. Those memoranda cogently harmonized seemingly inconsistent Supreme Court and Court of Appeals decisions. She also prepared, in connection with the same action, an extensive research memorandum regarding claim preclusion and issue preclusion, which included a discussion of the extent to which those doctrines can apply against the United States. Her research was reviewed, and highly praised, by attorneys at several components of the Department of Justice. Her research will be reflected in a memorandum of law to be filed by the United States this summer.

In addition, Caitlyn performed very helpful research concerning the issue of whether 8 U.S.C. § 1252(a)(2)(B)(i),(ii) preclude courts from exercising jurisdiction over cases challenging factual and legal determinations underlying discretionary decisions by United States Citizenship and Immigration Services on applications and petitions for immigration benefits. That issue, which has divided the Courts of Appeals, arises frequently in cases defended by this Office, so her research has been, and will continue to be, of great value to this Office.

Throughout her tenure as a student intern, Caitlyn exhibited great interest in, and great enthusiasm for, her assignments, along with a sober, businesslike, unassuming demeanor. She took her work very seriously and made every effort to provide a superior work product.

If you would like additional information about Caitlyn's work for this Office, do not hesitate to contact me at the number below.

A handwritten signature in cursive script, reading "Elliot M. Schachner", is written over a horizontal line.

ELLIOT M. SCHACHNER
Assistant U.S. Attorney
(718) 254-6053



ANDREW WEISSMANN
Professor of Practice

School of Law
Center on the Administration of
Criminal Law
40 Washington Square South, 302A
New York, NY 10012
P: 212 998 6119
andrew.weissmann@nyu.edu

June 12, 2023

RE: Caitlyn Galvin, NYU Law '24

Your Honor:

I write to recommend Caitlyn Galvin for a clerkship. At NYU School of Law, I taught Caitlyn in both my Criminal Procedure and National Security courses. She did splendidly, as I discuss below, in both classes. I recommend her highly as a law clerk. I have no doubt that you would find her smart, diligent, efficient, and thorough, and a particularly careful and clear writer. Caitlyn is also a delight to work with and I am confident she would be a valued and collegial addition to your chambers.

I met Caitlyn in the fall of 2022 in my course Criminal Procedure: Fourth, Fifth and Sixth Amendments. Caitlyn was a consistently thoughtful participant in class and outside of class during office hours. Caitlyn was a very quick study, mastering current doctrine and its subtleties. She was eager to dig deeper on the many complexities of the law, particularly relating to Fourth Amendment doctrine.

Then in spring 2023, Caitlyn was a member of my National Security seminar, where I got to know her better and was able to assess her writing abilities (the seminar had 27 students and required the submission of three papers). Caitlyn continued to be a thoughtful and diligent participant in class, asking clear and cogent questions, demonstrating deep immersion in the assigned material and an inquisitive mind. Her three papers were excellent: she picked interesting topics, researched them well, and wrestled with the pros and cons of a topic. Her writing was also unusually well organized and clear, and unmarred by typos and other distracting errors. Caitlyn impressed both my co-teacher Ryan Goodman, and me equally. Caitlyn received a very well-deserved A in the class for her stellar performance.

Finally, Caitlyn is a pleasure to deal with, and I have no doubt will work very well with other clerks, displaying collegiality and intellectual curiosity.

Please let me know if there is any further information I can provide about Caitlyn. I can be reached by email at aw97@nyu.edu or 917-575-2171.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Weissmann".
Andrew Weissmann

CAITLYN N. GALVIN

240 Mercer Street, #1606B

New York, NY 10012

(978) 210-1750 | caitlyn.galvin@nyu.edu

I researched and wrote this paper as my final assignment for Judge Jed Rakoff's "Class Actions Seminar." My task was divided into two parts. First, I submitted a 7,000-word paper on a topic that I selected: To what extent are *parens patriae* actions viable substitutes for private class actions? There, I examined their respective procedural limitations, agency problems, and deterrence values. Judge Rakoff graded this submission, which my transcript captures as "Class Actions Seminar." Second, Judge Rakoff suggested how I could supplement my initial paper to achieve a 10,000-word final product. He asked me to tackle "how to deal with the limitations of *parens patriae* suits in cases that parallel class action situations," including whether a court could "require the state to ascertain who were the victims and send the money to them." The final paper is reflected on my transcript as "Class Actions Seminar: Writing Credit."

This writing sample encompasses the section of my final paper that responds to Judge Rakoff's prompt. To identify the issues I seek to solve, I also included a brief section summarizing the conclusions drawn in my initial submission. Everything is my own work product; beyond proposing the question, Judge Rakoff did not provide substantive feedback or edits. This year, I plan for this section to form the basis of a Note, which I will submit to the *New York University Law Review*.

An Efficient Alternative: Comparing Class Actions and *Parens Patriae* Actions

Initial Conclusion: Weighing Procedures, Agency Costs, and Deterrence

Parens patriae suits closely mirror class actions. The two forms have similar deterrence values; they force corporations to internalize the costs of their misconduct and alter their behavior. Likewise, both present agency costs. For class actions, issues arise when the entrepreneurial attorney with a significant stake in the litigation prioritizes their fees over their small-stake clients' recovery. Meanwhile, *parens patriae* actions present agency costs when state attorneys general prioritize their or other constituents' interests over those of the *parens patriae* group, as well as when state AGs jockey for position in multistate actions. Although they manifest differently, these costs ultimately interfere with consumers' share of the recovery in both situations. Where *parens patriae* suits and class actions diverge is in their procedural rules. While potential classes must navigate the relatively rigid hurdles of Rule 23 to be certified by a court, *parens patriae* actions can be pursued without any rigid inquiry into their formulation. Ultimately, these points of comparison and dichotomy allow state attorneys general to do the work of class actions more efficiently than private attorneys.¹

Nevertheless, some may assert that *parens patriae* litigation fails to achieve the principal goal of class actions: directly allocating monetary damages to the injured. Admittedly, *parens patriae* settlements rarely provide for consumer compensation because agency costs interfere.² States legislatures prefer the policy flexibility that comes with allocating recovery to the general

¹ See generally Susan Beth Farmer, *More Lessons from the Laboratories: Cy Pres Distributions in Parens Patriae Antitrust Actions Brought by State Attorneys General*, 68 FORDHAM L. REV. 361 (1999) (concluding that cy pres distributions resulting from *parens patriae* actions can "provide the best available benefit, albeit indirect, to consumers at the most efficient cost").

² Cf. Dishman, Elysa M. Dishman, *Class Action Squared: Multistate Actions and Agency Dilemmas*, 96 NOTRE DAME L. REV. 291, 338–39 (2020) (discussing how a multistate settlement with General Motors did not provide consumer compensation, but Arizona "opted out" of the agreement, settled independently, and provided \$200 per consumer).

fund, while state attorneys general often hope funds will be rerouted to their own office.³ However, *parens patriae* suits are still a worthwhile alternative because they accomplish class actions' deterrence and recovery goals where private suits fail. Even without cash in hand, consumers reap the benefits of decreased corporate misconduct and increased funding for initiatives in their state. *Parens patriae* actions can break ground where procedural intricacies hamper their private counterpart. Moreover, there are opportunities to address the central limitation of *parens patriae* actions and encourage direct payments to the injured.

I. Addressing the Limitations of *Parens Patriae* Actions

Under Rule 23, class action procedures provide abundant opportunities for trial courts to intervene and protect class members' interests. As previously discussed, Rules 23(a) and 23(b) require courts to evaluate a prospective class at the certification stage, and they may decline to certify the class under a laundry list of provisions designed to protect individual interests within aggregate litigation.⁴ Meanwhile, Rule 23(e) mandates court approval of any "proposed settlement, voluntary dismissal, or compromise" and requires that the court ensure sufficient notice is provided to class members.⁵ If the proposal would bind class members, this endorsement becomes contingent upon the court finding the settlement "is fair, reasonable and adequate" after considering numerous factors, including whether "the class representatives and class counsel have adequately represented the class," "the effectiveness of any proposed method of distributing relief to the class," and whether "the relief provided for the class is adequate."⁶ In this way, Rule 23 provides courts significant latitude to intervene on the class members' behalf at the certification or settlement stage. However, there is no such universal rule authorizing, let

³ See *id.* at 323, 345.

⁴ See *supra* omitted section.

⁵ FED. R. CIV. P. 23(e).

⁶ FED. R. CIV. P. 23(e)(2).

alone requiring, trial courts the discretion to scrutinize the makeup or settlement of *parens patriae* actions. In turn, this limits their ability to protect individual interests and rights within *parens patriae* suits. Yet, courts do have some mechanisms to pressure attorneys general to allocate recovery to their injured citizens.

II. Courts' Discretion Under Existing State and Federal Law

There are a few narrow circumstances where trial courts are explicitly required to review *parens patriae* settlements. Currently, federal antitrust law,⁷ as well as some state antitrust and unfair trade practices laws,⁸ mandate judicial sanction of such settlements. For instance, under the Cartwright Act, California's primary state antitrust law, when the California Attorney General brings a *parens patriae* antitrust action, it "shall not be dismissed or compromised without approval of the court."⁹ As the Cartwright Act and other similar provisions do not articulate a specific "approval" standard, "federal courts have adopted the approval procedure and standards used for approval in class action settlements under Federal Rule of Civil Procedure 23."¹⁰ Accordingly, when the United States District Court for the Northern District of California reviewed an antitrust settlement between eBay and California as *parens patriae*, it evaluated the parties' plan to provide notice to the *parens patriae* members, the fairness of the settlement, and the distribution plan.¹¹ *California v. eBay* exemplifies how incorporating the Rule 23(e) approval

⁷ See 15 U.S.C. § 15c(c) (2006) (providing that a federal antitrust action brought by an attorney general on behalf of their citizens "shall not be dismissed or compromised without approval of the court").

⁸ See, e.g., ALASKA STAT. ANN. § 45.50.577(g) (West 2011); COLO. REV. STAT. ANN. § 6-4-111(3)(b) (West 2011); FLA. STAT. ANN. § 542.22(3)(c) (West 2007); OR. REV. STAT. ANN. § 646.775(3) (West 2011).

⁹ Cartwright Act, CAL. BUS. & PROF. CODE § 16760(c) (West 2008).

¹⁰ *California v. eBay, Inc.*, No. 5:12-cv-05874-EJD, 2015 WL 5168666, at *2 (N.D. Cal. Sept. 3, 2015); see also *New York & Maryland v. Nintendo of Am., Inc.*, 775 F. Supp. 676, 680 (S.D.N.Y. 1991) (noting that courts have adopted the same "fair, reasonable and [adequate]" standard used in class actions for approving *parens patriae* settlements); *In re Minolta Camera Prods. Antitrust Litig.*, 668 F. Supp. 456, 459 (D.C. Md. 1987) ("The standard for determining whether a proposed [*parens patriae*] settlement should be approved is whether the settlement is "fair, reasonable and adequate.")

¹¹ See *eBay*, 2015 WL 5168666.

standard to *parens patriae* approval provisions empowers courts to guard the interest of *parens patriae* members.

First, in its analysis of whether the settlement was “fair, reasonable, and adequate,” the *eBay* court examined the planned \$2.375 million restitution fund.¹² It noted the fact that those claimants “who were most affected by eBay’s practice” would receive \$10,000 in recovery and the “generally positive” reaction of *parens patriae* members were factors that weighed in favor of settlement approval.¹³ Next, the court turned to the planned *cy pres* distribution for unclaimed funds. The *cy pres* doctrine allows courts to distribute unclaimed or non-distributable portions of a settlement fund to the “next best” means of compensating absent class members, usually charities or advocacy organizations working in an area related to the litigation.¹⁴ Here, the court considered whether the *cy pres* distribution “(1) address[ed] the objectives of the underlying statutes, (2) target[ed] the plaintiff class, and (3) provide[d] reasonable certainty that any member will be benefitted.”¹⁵ Since California accused eBay of coordinating with another company to eliminate the competition for employees, the court accepted the *cy pres* distribution to several non-profits upon finding that “each of the identified organizations has a nexus to the underlying lawsuit in that they involve employment-related skills and training, and are all located in California.”¹⁶ Ultimately, the District Court approved the settlement plan.

In combination, this approach demonstrates that there is room under some laws for courts to push funds toward the victims in *parens patriae* settlements. For example, just as the *eBay* court considered direct compensation a positive factor in settlement evaluation, courts can reject

¹² See *id.* at *3–6.

¹³ *Id.*

¹⁴ See Martin H. Redish, Peter Julian & Samantha Zyontz, *Cy Pres Relief and the Pathologies of the Modern Class Action: A Normative and Empirical Analysis*, 62 FLA. L. REV. 617, 620 (2010).

¹⁵ *eBay*, 2015 WL 5168666, at *6.

¹⁶ *Id.* at *7.

settlements under the “fair, reasonable, and adequate” standard if payments are absent where they would be appropriate and feasible. In response, parties would return to the negotiating table and distribute funds to individual citizens or try to avoid rejection altogether by prioritizing payments in initial discussions. Likewise, as the Rule 23 procedures for settlement “approval” allow for court assessment of distribution, courts have the latitude to mirror their evaluation of *cy pres* distributions in class actions when assessing *parens patriae cy pres* distributions or state treasury allotments. Namely, courts can require that, when appropriate, parties direct unclaimed or undistributed funds towards a state program with a nexus to the *parens patriae* litigation. In this way, when companies like Target or Neiman Marcus settle data privacy cases, courts could funnel the recovery towards state data privacy and security divisions rather than general treasury funds.¹⁷ Therefore, even if the litigation does not result in individual payments, judges could ensure *parens patriae* members indirectly benefit.

Despite this positive potential, absent a push by state legislatures to add settlement approval to more causes of action, this judicial examination is ultimately circumscribed to situations where the statute in question contains a specific settlement approval provision. This means that such an opportunity is largely exclusive to federal antitrust suits or in those few states that require approval in their antitrust or unfair trade practices statutes. Consequently, it is necessary to look to other mechanisms of judicial intervention.

III. Redefining Adequacy of Representation

Unlike in class actions,¹⁸ questions of whether attorneys general have adequately represented their constituents rarely surface. Yet, the inquiry is relevant in two contexts, assessing the preclusive effect of a *parens patriae* suit and considering whether private actors

¹⁷ For a discussion of the *parens patriae* actions against Target and Neiman Marcus, see *supra* omitted section.

¹⁸ See *supra* omitted note and accompanying text.

may intervene in a public suit under Rule 24 of the Federal Rules of Civil Procedure.¹⁹ In both instances, courts tend to defer to public attorneys, typically presuming they will adequately represent the interests of their citizens,²⁰ although the Supreme Court has not explicitly resolved the issue.²¹ This respect is often predicated on the notion that attorneys general lack financial interests in the litigation.²² However, as previously discussed, the belief that *parens patriae* suits lack the principal-agent problems that plague class actions is misguided. If courts adjust to this reality, reject or adjust the degree of deference afforded to public attorneys, and begin to examine whether attorneys general have adequately represented their constituents, they will create an opportunity to scrutinize *parens patriae* settlements.

A. Utilizing Preclusion

Broadly, preclusion provides a mechanism for the final resolution of legal claims. “Claim preclusion” or “res judicata” bars “the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions that could have been . . . raised in the first suit.”²³ Typically, when the state pursues an interest held by the public at large, courts hold that private parties seeking to vindicate those same public rights in a separate action will be precluded by a final judgment in the *parens patriae* suit.²⁴ Conversely, if the private action asserts distinctly private rights, then there is no such preclusion.²⁵ Yet, the distinction between public and private is not always clear given that states are empowered to

¹⁹ FED. R. CIV. P. 24.

²⁰ See Margaret H. Lemos, *Aggregate Litigation Goes Public: Representative Suits by State Attorneys General*, 126 HARV. L. REV. 486, 502–510 (2012) (discussing the agency costs of public and private aggregate litigation).

²¹ See *Richards v. Jefferson Cnty.*, 517 U.S. 793, 802 n.6 (1996) (“We need not decide here whether public officials are always constitutionally adequate representatives of all persons over whom they have jurisdiction when, as here, the underlying right is personal in nature.”)

²² See Farmer, *supra* note 1, at 388.

²³ *Res Judicata*, BLACK’S LAW DICTIONARY (11th ed. 2019).

²⁴ See Lemos, *supra* note 17, at 533–534.

²⁵ See *id.*

pursue ambiguous “quasi-sovereign” interests. As a result, when an attorney general brings a *parens patriae* action, the preclusive effect of any final judgment is a significant question.

Critically, the Supreme Court has interpreted the Fourteenth Amendment’s Due Process Clause to constrain preclusion. In the Court’s view, to adhere to “our ‘deep-rooted historic tradition that everyone should have his own day in court,’”²⁶ a nonparty may only be bound to a judgment in narrow circumstances, primarily if they were “adequately represented by someone with the same interests who [wa]s a party” to the suit.²⁷ In the preclusion context, “[a] party’s representation of a nonparty is ‘adequate’... only if, at a minimum: (1) the interests of the nonparty and her representative are aligned, and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the nonparty’s interests.”²⁸ In light of these definitions, the assumption that government attorneys adequately represent their constituents skews courts’ analysis towards nonparty preclusion, often inhibiting *parens patriae* group members from pursuing private actions in the gray areas of “quasi-sovereign” interests. Discarding this presumption would free courts to fully scrutinize the adequacy of representation, restrict the preclusive effect of *parens patriae* actions, and thereby pressure *parens patriae* parties to pay individuals directly.

Specifically, when evaluating whether a prior *parens patriae* settlement should preclude a private action by members of the *parens patriae* group, courts should follow the Supreme Court’s approach in assessing intra-class conflicts of interest. In *Amchem Products, Inc. v. Windsor*,²⁹ the Supreme Court examined the terms of the class action settlement and structure of

²⁶ *Martin v. Wilks*, 490 U.S. 755, 762 (1989) (quoting 18 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, *FEDERAL PRACTICE AND PROCEDURE* § 4449 (1981)).

²⁷ *Richards v. Jefferson Cnty.*, 517 U.S. 793, 798–799 (quoting *Wilks*, 490 U.S. at 762).

²⁸ *Taylor v. Sturgell*, 553 U.S. 880, 900 (2008) (citations omitted).

²⁹ 521 U.S. 591 (1997).

the settlement negotiations to conclude that the named parties and absent class members did not share the same interests, so the class representatives did not adequately represent the interests of the class.³⁰ Emulating this pattern, courts should assess the terms of a *parens patriae* settlement and negotiations to determine if the attorney general truly represented the *parens patriae* group's interests.³¹ For instance, directing settlement proceeds toward the state treasury may indicate that the attorney general represented the collective public, not the injured. Upon recognizing this misalignment of interests, a court should conclude the attorney general did not adequately represent the *parens patriae* group, so the prior settlement should not preclude the private action. Several courts have already recognized the limits of public representation and followed such an approach. In *Payne v. National Collection Systems, Inc.*,³² the California Court of Appeal assessed whether a judgment secured by the California Attorney General precluded a consumer class action targeting the same defendant and conduct for alleged violations of unfair competition law.³³ In its analysis, the court found it significant that restitution for the injured was not the Attorney General's primary goal and that no plaintiff in the pending action had received restitution.³⁴ Accordingly, the court concluded that preclusion did not attach because the interests of the Attorney General in "his role as protector of the public may be inconsistent with the welfare of the class so he could not adequately protect their interests."³⁵ The class action could thus proceed.

Limiting the preclusive effect of *parens patriae* actions would help direct money towards members of the *parens patriae* group in two ways. First, if private actors are not precluded from

³⁰ *Id.* at 626–628.

³¹ *See id.*

³² 111 Cal. Rptr. 2d 260 (Cal. Ct. App. 2001).

³³ *See id.*

³⁴ *See Payne*, 111 Cal. Rptr. 2d at 266.

³⁵ *Id.*

bringing subsequent suits, *parens patriae* group members are free to litigate an independent class action. In turn, a private class action allows the injured to pursue their own recovery absent from the *parens patriae* action. Second, the enhanced possibility of a follow-on class action can influence an initial *parens patriae* settlement. Generally, defendants in aggregate litigation want “global peace.”³⁶ In other words, they seek to ensure that a *parens patriae* or class action settlement resolves the claims of all possible victims, thus capping their liability and preventing an endless parade of new victims, new litigation, and new payouts.³⁷ For these defendants, preclusion is the tool that gives an initial result its effect in achieving global peace and barring follow-on claims. It is in their interests to ensure the outcome of a *parens patriae* suit will preclude subsequent class actions and additional costs. Consequently, tying the preclusive effect of *parens patriae* settlements to direct payments to the injured incentivizes defendants to structure the settlement accordingly. Within negotiations with attorneys general, defendants may ask that any agreement stipulate how recovery is distributed, thereby curbing an attorney general’s discretion to deposit the funds into the state treasury. In this way, courts can pressure defendants to protect victims’ interests where public attorneys do not.

The utility of preclusion in facilitating direct payments to the injured is admittedly imperfect. The preclusive effect of any judgment is assessed *ex-post*; it is determined by the court overseeing the follow-on class action, not the initial *parens patriae* suit.³⁸ Therefore, even with “adequacy of representation” redefined in the public context, a court dissatisfied with a lack of direct recovery from a *parens patriae* suit still could not reject a settlement on that ground. It

³⁶ See Brian Wolfman & Alan B. Morrison, *Representing the Unrepresented in Class Actions Seeking Monetary Relief*, 71 N.Y.U. L. REV. 439, 459 (1996) (discussing the settlement negotiations regarding the silicone-gel breast implants litigation and defendants’ emphasis on resolving all future cases).

³⁷ See *id.*

³⁸ See Lemos, *supra* note 17, at 532–535.

could only wait until private suits appeared, hold they were not precluded unless victims were paid in the initial matter, and hope future defendants appreciated the message. Moreover, not all *parens patriae* settlements provide courts the eventual opportunity to assess adequacy of representation. Preclusion only attaches when there was a final judgment in the prior action.³⁹ As court approval of a *parens patriae* settlement is not necessary, whether a *parens patriae* settlement triggers a final judgment depends on how the action was pursued and the underlying law creating the cause of action. For example, if the attorney general sought and received a consent decree or another form of court-issued injunctive relief, then preclusion attaches.⁴⁰ Yet, if the parties merely reached a voluntary agreement without a final judgment, it does not.⁴¹ Ultimately, courts cannot scrutinize settlements that are outside their reach. Therefore, it is necessary to combine preclusion with other levers to propel recovery for the injured.

B. Utilizing Independent Intervenors

Rule 24 of the Federal Rules of Civil Procedure allows nonparties to intervene and join ongoing litigation. Rule 24(a)(2) allows nonparties to intervene as a matter of right if they claim “an interest relating to the property or transaction that is the subject of the action, and [are] so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.”⁴² Meanwhile, Rule 23(b)(2) stipulates that courts are allowed, but not required, to permit

³⁹ See *Taylor v. Sturgell*, 553 U.S. 880, 892.

⁴⁰ See, e.g., *Alaska Sport Fishing Ass’n v. Exxon Corp.*, 34 F.3d 769 (9th Cir. 1994) (affirming the dismissal of a class action after concluding the private plaintiffs were in privity with the government plaintiffs in a prior suit brought under the *parens patriae* doctrine).

⁴¹ See, e.g., *Montana v. United States*, 440 U.S. 147, 153 (1979) (“Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.”); *Lee v. City of Peoria*, 685 F.2d 196, 199 (7th Cir. 1982) (“The essential elements of the [res judicata] doctrine are generally stated to be: (1) a final judgment on the merits in an earlier action; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits.”)

⁴² FED. R. CIV. P. 24(a)(2).

nonparties to intervene who have “a claim or defense that shares with the main action a common question of law or fact.”⁴³ However, courts typically bar private parties from intervening in a *parens patriae* action.⁴⁴ Continuing the presumption that government entities adequately represent their citizens, courts regularly decline permissive intervention and have held that movants must make “a strong affirmative showing that the sovereign is not fairly representing the interests of the applicant” to warrant intervention as a matter of right.⁴⁵ This is a high bar; disagreement over litigation strategy or damages pursued are insufficient to justify intervention, so private plaintiffs are often kept out.⁴⁶

As with preclusion, if courts discard this presumption of adequacy, they create an opportunity to regulate attorneys general. Here, courts should utilize the same standard as in private actions. The proposed intervenor should simply have to show that the attorney general’s “representation of his interest ‘may be’ inadequate” to participate in a *parens patriae* action.⁴⁷ This would then enable increased intervention by attorneys or advocacy organizations representing one or more members of the *parens patriae* group. As Edward Brunet argues regarding class actions, intervenors in *parens patriae* suits may function similarly to the separately-represented subclasses commonly utilized in class actions.⁴⁸ Essentially, as the AG represents the interests of the state and its citizens as a collective, the intervenor would represent the interests of the injured, advocating for direct payments and other issues during the litigation and settlement process. Such intervenors would also function as monitors, enhancing political

⁴³ FED. R. CIV. P. 24(b)(2).

⁴⁴ See Lemos, *supra* note 17, at 508–510.

⁴⁵ See *id.* at 509 (quoting *United States v. Hooker Chemicals & Plastics Corp.*, 749 F.2d 968, 985 (1984)).

⁴⁶ See *id.*

⁴⁷ *Id.* (quoting *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972)).

⁴⁸ See Edward Brunet, *Improving Class Action Efficiency by Expanded Use of Parens Patriae Suits and Intervention*, 74 TUL. L. REV. 1919, 1935 (2000) (arguing that private intervenors can improve the efficiency of class actions by helping the class monitor class counsel).

accountability.⁴⁹ With the knowledge of the law, the potential value of claims, and the negotiations that come with active involvement in litigation, intervenors could raise the alarm if an attorney general is deferring to politically connected defendants, diverting money from the injured to their office, or otherwise sacrificing their citizens' interests. This would help make up the resource deficit between citizens and powerful entities, giving voters the necessary information to replace those who do not perform as desired.⁵⁰ With these benefits in mind, a court concerned that the attorney general is not pursuing restitution for individual victims would have a recourse *during* the litigation. They could find the attorney general's representation of the injured "may be inadequate," and authorize an intervenor to vindicate that perspective.⁵¹

IV. Potential Drawbacks of Increased Judicial Discretion

Yet, any expansion of judicial intervention into *parens patriae* actions may come with drawbacks. First, *parens patriae* suits' key advantage over class actions is their lower transaction costs. Class actions' lengthy certification process, notice requirements, and complicated settlement administration procedures add litigation expenses that detract from the plaintiffs' ultimate recovery.⁵² If new hurdles lengthen *parens patriae* litigation and settlement negotiations, while courts require direct recovery to the injured beyond where it is cost-effective to administer payments, then such changes will minimize the efficiency advantages that enabled *parens patriae* suits to succeed where class actions failed.⁵³

Additionally, judicial activity in this realm would "put courts in the unenviable position of second-guessing the attorney general's choices with respect to policy tradeoffs and other

⁴⁹ See *id.*

⁵⁰ See Lemos, *supra* note 17, at 514–515.

⁵¹ See Lemos, *supra* note 17, at 508–511.

⁵² See *supra* omitted section.

⁵³ Cf. Brunet, *supra* note 48, at 1938–1939 (discussing the efficiency advantages of *parens patriae* suits).

matters in which judges are unlikely to be expert.”⁵⁴ For example, an attorney general seeking damages for public loss of use of natural resources after an oil spill may decline to compensate individual resorts or recreational fishermen because the funds would be more efficiently deployed by a state-run cleanup effort.⁵⁵ AGs and other elected officials accustomed to such policy tradeoffs may be better suited to making that decision than a judge focused on the litigation and parties in front of them.

Lastly, the risk of being publicly reproached by a judge for failing one’s constituents or seeing a court throw out a high-stakes settlement may change the political calculus for attorneys general considering whether to pursue *parens patriae* suits. To an extent, the current information gap gives AGs the freedom to take risks; they can publicize their “wins” and high-dollar settlements, but failures at the negotiating table typically go unnoticed by the press and public.⁵⁶ It is much easier for a reporter to scrutinize a settlement allocation when it is dissected in a court opinion or transcript. With this shift, attorneys general may become unwilling to take on those cases that could become political quagmires.

Nevertheless, courts are capable of assuaging these three concerns by limiting their intervention to where direct compensation is clearly appropriate in the context of the litigation. For instance, if Texas allocated its \$95,000 share of the Neiman Marcus settlement to the 65,444 victims, each would receive approximately \$1.45.⁵⁷ A court would easily see the logic in the state retaining the \$95,000 to benefit its citizens as a whole and not interfere. Conversely, it may question Georgia’s allocation of \$99 million to “attracting companies” and examine the litigation

⁵⁴ Lemos, *supra* note 17, at 543.

⁵⁵ This example is loosely based on the facts of *Alaska Sport Fishing Ass’n v. Exxon Corp.*, 34 F.3d 769 (9th Cir. 1994).

⁵⁶ See Lemos, *supra* note 17, at 520–521.

⁵⁷ See *supra* omitted section for a discussion of the Neiman Marcus data breach settlements.

more closely.⁵⁸ This approach would minimize, although not eliminate, transaction costs, judicial second-guessing, and the threat of political upheaval to the most drastic cases. Thus, courts could preserve the efficiency gains of *parens patriae* actions while attacking their most egregious efficiency costs.

Final Conclusion: A Viable but Flawed Remedy with Greater Potential

In the competition with class actions, judicial intervention could tip the scales towards *parens patriae* actions. Although between statutorily mandated approval, weaponized preclusion, and independent intervenors, any individual solution is imperfect, together they empower courts to direct *parens patriae* settlement proceeds toward the genuine victims. With the potency of *parens patriae*'s main principal-agent problem diminished, both agency costs and efficiency would weigh in *parens patriae*'s favor, while their deterrence values would remain offsetting. Yet, in addressing agency costs, courts must be cognizant of the downsides of their intervention and take care not to completely sacrifice efficiency. If the right balance is struck, courts can maximize the utility of *parens patriae* litigation.

⁵⁸ See *supra* omitted section for a discussion of the 2012 *parens patriae* settlement between forty-nine states and mortgage-servicing banks, including Georgia's portion of the recovery.

Applicant Details

First Name	Page		
Last Name	Garbee-Kim		
Citizenship Status	U. S. Citizen		
Email Address	pag8gy@virginia.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 1622 5th Street N.W. City Washington State/Territory District of Columbia Zip 20001 Country United States </td> </tr> </table>	Address	Street 1622 5th Street N.W. City Washington State/Territory District of Columbia Zip 20001 Country United States
Address			
Street 1622 5th Street N.W. City Washington State/Territory District of Columbia Zip 20001 Country United States			

Contact Phone Number	4346606397
----------------------	-------------------

Applicant Education

BA/BS From	Syracuse University
Date of BA/BS	May 2015
JD/LLB From	University of Virginia School of Law
	http://www.law.virginia.edu
Date of JD/LLB	May 23, 2021
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Virginia Journal of International Law
Moot Court Experience	No

Bar Admission

Admission(s)	District of Columbia
--------------	-----------------------------

Prior Judicial Experience

Judicial Internships/Externships	Yes
----------------------------------	------------

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Robinson, Kimberly
krobinson@law.virginia.edu
434-924-3181

Gardner, Mary
mgardner@venable.com

Rutherglen, George
grutherglen@law.virginia.edu
(434) 924-7015

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Page Garbee-Kim

1622 5th Street N.W., Unit B Washington, DC 20001 | pag8gy@virginia.edu | (434) 660-6397

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a University of Virginia Law alumna hoping to clerk in your chambers for the 2024-25 term or later. As a first-generation law student who was the first in my family to move off our farm, I hope to bring a unique perspective to your chambers. Due to the limited opportunities that my hometown provided, I started college at 15, attending a local community college, while simultaneously working two jobs. I later transferred to Syracuse University, where I graduated *summa cum laude* at 19 — completing a double major and the honors curriculum while working full-time to fund my education. After graduation, I accepted a position teaching at a public charter school in Ward 8. Though teaching was incredibly rewarding, my passion for writing and legal analysis led me to apply to law school, and I currently work at Venable, LLP as a litigation associate.

During my legal career, I have refined my research and writing skills through internships with Chief Judge Beryl Howell at the D.D.C. and as a Submissions Editor for the Virginia Journal of International Law. At Venable, I have been afforded the opportunity to take on tasks that are typically reserved for mid- to senior-level associates, such as taking depositions of key witnesses and drafting multiple motions for summary judgment in their entirety. While my work at Venable has offered the chance to participate in various portions of mediations, arbitrations, and trials, opportunities to experience litigation from start to finish are rare. A clerkship under your guidance will accelerate my development as a litigator and continue to hone my legal research and writing skills.

Please find my resume, writing sample, and law school transcript attached. Thank you for your time and consideration.

Sincerely,

Page Garbee-Kim

Page Garbee-Kim

Page Garbee-Kim

1622 5th Street N.W., Unit B Washington, DC 20001 | pag8gy@virginia.edu | (434) 660-6397

EDUCATION

University of Virginia School of Law, Charlottesville, VA

J.D., May 2021

- Virginia Law Scholarship (merit-based scholarship)
- *Virginia Journal of International Law*, Submissions Editor
- Student Bar Association, 2L Senator and Health & Wellness Committee Chair
- Volunteering: Street Law, Director of Curriculum; Lambda Law Alliance; Virginia Law First-Generation Professionals; Virginia Law Women; Child Advocacy Clinic

Syracuse University, Syracuse, NY

B.S., Political Science and Rhetorical Studies, *summa cum laude*, May 2015

- Renee Crown University Honors Program Thesis: A Comparison of Communication Practices in Hazing and Domestic Violence Situations
- Mary E. Earle Endowed Prize (for excellence in research and writing)
- White Denison Grand Prize (in recognition of exemplary public speaking)

EXPERIENCE

Venable, LLP, Washington, DC

Litigation Associate, June 2020 – Present

- Managed work across numerous practice areas, including labor and employment, advertising, and insurance
- First-chaired deposition in complex litigation matter, including the development of strategy and questions
- Drafted substantive memoranda in both litigation and regulatory matters, including motions for summary judgment, discovery motions, motions to compel, white papers, and reverse FOIA requests
- Analyzed and revised complex contracts and documents, including insurance policies, separation agreements, settlement agreements, and employment policies

The Honorable Beryl A. Howell, United States District Court (D.D.C.), Washington, DC

Judicial Intern, May – August 2019

- Conducted legal research on civil and criminal matters pending before the court
- Drafted internal memoranda on the rules of civil procedure, international law, and administrative law
- Completed cite checks for opinions on administrative law, civil damages, and other final orders
- Drafted portions of opinions including sections on questions of standing, statutory background, case-specific facts, and procedural history

Legal Aid Justice Center, Just Children Program, Charlottesville, VA

Volunteer, August 2018 – May 2019

- Served as liaison between clients and supervising attorneys, conducted intake interviews, and reviewed cases in order to provide free representation to low-income families and ensure equitable education outcomes

Achievement Preparatory Academy, Washington, DC

Teacher, August 2015 – June 2018

- Chair of the Co-Curricular Team, Reader Leader Committee (encouraged scholar achievements in literacy), MAP/PARCC Testing Committee (organized school-wide testing and partnered with families to increase preparedness), and the SOW Committee (created incentives for positive scholar behavior)
- Awarded Teacher of the Month in June 2017 and March 2018 for leadership and innovation by designing the first performing and visual arts curriculum in an under-resourced district

Community for Learning Advancement, Lynchburg, VA

Associate Director & Founder, May 2015 – July 2017

- Crafted the mission statement, by-laws, and various marketing materials to provide educational supplies and scholarships across 13 public schools in the county
- Responsible for fundraising, public speaking, and donor relationship management
- Supplemented work with legislative advocacy, particularly for increased school funding and gifted education programs

INTERESTS

- Farming and Animal Husbandry; Watercolor Painting; Vintage Teacups; Barre Instructor

Page A Garbee

09/18/2021

Degrees Conferred

Confer Date: 05/23/2021
Degree: Juris Doctor
Major: Law

Beginning of Law Record

2018 Fall

School:	School of Law		
Major:	Law		
LAW	6000	Civil Procedure	B+ 4.0
LAW	6002	Contracts	B+ 4.0
LAW	6003	Criminal Law	A- 3.0
LAW	6004	Legal Research and Writing I	S 1.0
LAW	6007	Torts	B 4.0

2019 Spring

School:	School of Law		
Major:	Law		
LAW	6001	Constitutional Law	B+ 4.0
LAW	6005	Lgl Research & Writing II (YR)	S 2.0
LAW	6006	Property	A- 4.0
LAW	6104	Evidence	A- 4.0
LAW	7023	Empl Law: Contrcts/Torts/Stat	A- 3.0

2019 Fall

School:	School of Law		
Major:	Law		
LAW	8606	Child Advocacy Clinic (YR)	CR 4.0
LAW	9074	Legis Drafting & Public Policy	B+ 3.0
LAW	9089	Seminar in Ethical Values (YR)	YR 0.0
LAW	9294	Drug Prod Liability Litgn Sem	A- 2.0
LAW	9324	Law, Inequality & Educ Reform	A- 3.0

2020 Spring

School:	School of Law		
Major:	Law		
LAW	7064	Nonprofit Organizations	CR 3.0
LAW	7071	Professional Responsibility	CR 2.0
LAW	7105	Modern Real Estate	CR 3.0
LAW	7163	Legislation and Regulation	CR 4.0
LAW	8607	Child Advocacy Clinic (YR)	CR 4.0
LAW	9090	Seminar in Ethical Values (YR)	CR 1.0

2020 Fall

School:	School of Law		
Major:	Law		
LAW	7022	Employment Discrimination	A- 3.0
LAW	7795	Art Law (SC)	A- 2.0
LAW	7808	Cryptocurrency Reg (SC)	A 1.0
LAW	8009	Copyright Law	B+ 3.0
LAW	8026	Taking Effective Depositions	A- 2.0
LAW	9087	Internatl Environmental Law	A 3.0

2021 Spring



School:	School of Law		
Major:	Law		
LAW	6102	Administrative Law	A 4.0
LAW	7014	Conflict of Laws	A 3.0
LAW	7103	Education Law Survey	A 3.0
LAW	7820	Higher Education & Law (SC)	A- 1.0
LAW	7825	Internal Investigations (SC)	A- 1.0

End of Law School Record

SYRACUSE UNIVERSITY

Office of the Registrar

Academic Transcript

Garbee, Page Alexander College of Visual and Performing Arts Major: Comm & Rhetorical Studies Major: Political Science	XXX-XX-7066 Undergraduate Record	Transcript Print Date: 06/18/2015		
TRANSFER CREDITS Central Virginia Comm Coll 64.0				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Fall 2013-VPA-Comm&Rhetorical Studies Concepts & Persp Comm Studies CRS181 3.0 A Public Advocacy CRS225 3.0 A Political Communication CRS355 3.0 A Honors Orientation Seminar HNR100 1.0 A- The Human Predicament HNR240 3.0 A Understanding Poltcl Arguments (HNR) PSC300 3.0 A- Foundatns Human Behavior PSY205 3.0 A Attempted: 19.0 Earned: 19.0 GrPts: 74.6680 GPA: 3.930 </td> <td style="width: 50%; vertical-align: top;"> ** Undergraduate Record Credit Summary ** Total Units Earned: 148.0 GPA Credits: 84.0 Transfer Credit: 64.0 Grade Points: 327.6690 Other Credit: 0.0 Cumulative GPA: 3.901 End of Undergraduate Record End of complete transcript record </td> </tr> </table>			Fall 2013-VPA-Comm&Rhetorical Studies Concepts & Persp Comm Studies CRS181 3.0 A Public Advocacy CRS225 3.0 A Political Communication CRS355 3.0 A Honors Orientation Seminar HNR100 1.0 A- The Human Predicament HNR240 3.0 A Understanding Poltcl Arguments (HNR) PSC300 3.0 A- Foundatns Human Behavior PSY205 3.0 A Attempted: 19.0 Earned: 19.0 GrPts: 74.6680 GPA: 3.930	** Undergraduate Record Credit Summary ** Total Units Earned: 148.0 GPA Credits: 84.0 Transfer Credit: 64.0 Grade Points: 327.6690 Other Credit: 0.0 Cumulative GPA: 3.901 End of Undergraduate Record End of complete transcript record
Fall 2013-VPA-Comm&Rhetorical Studies Concepts & Persp Comm Studies CRS181 3.0 A Public Advocacy CRS225 3.0 A Political Communication CRS355 3.0 A Honors Orientation Seminar HNR100 1.0 A- The Human Predicament HNR240 3.0 A Understanding Poltcl Arguments (HNR) PSC300 3.0 A- Foundatns Human Behavior PSY205 3.0 A Attempted: 19.0 Earned: 19.0 GrPts: 74.6680 GPA: 3.930	** Undergraduate Record Credit Summary ** Total Units Earned: 148.0 GPA Credits: 84.0 Transfer Credit: 64.0 Grade Points: 327.6690 Other Credit: 0.0 Cumulative GPA: 3.901 End of Undergraduate Record End of complete transcript record			
Spring 2014-VPA-Comm&Rhetorical Studies Concepts & Persp in Rhetoric CRS183 3.0 A Found of Inquiry in Human Comm CRS287 3.0 A Interrogation HNR260 3.0 A The Judicial Process PSC304 3.0 A- Constitutional Law II PSC325 3.0 B+ Drugs and Human Behavior PSY315 3.0 A- Understanding Suicide (HNR) PSY400 3.0 A Attempted: 21.0 Earned: 21.0 GrPts: 80.0010 GPA: 3.810				
Summer 2014-VPA-Comm&Rhetorical Studies Comm&Rhetorical Studies in DC CRS360 3.0 A Attempted: 3.0 Earned: 3.0 GrPts: 12.0000 GPA: 4.000				
Fall 2014-VPA-Comm&Rhetorical Studies Psychology of Childhood PSY335 3.0 A Program Abroad: Wroclaw:University of Lower Si, Poland Negotiat IDs/Europe's Borders CRS400 3.0 A Survival Polish POL100 1.0 A Civil Society East and West PSC300 3.0 A East Central Europe in 20th C PSC300 3.0 B+ Engag Contemp World/Ethcs&Phil PSC300 3.0 A- Attempted: 16.0 Earned: 16.0 GrPts: 61.0000 GPA: 3.813				
Spring 2015-VPA-Comm&Rhetorical Studies Presentational Speaking CRS325 3.0 A Intro. to Argumentation CRS334 3.0 A Communication in Organizations CRS338 3.0 A Honors Capstone Project CRS499 1.0 A Rhetoric and Philosophy CRS567 3.0 A Intro to Political Analysis (HNR) PSC202 3.0 A Forensic Psychology PSY474 3.0 A Research and Writing (Honors) (HNR) WRT209 3.0 A Attempted: 22.0 Earned: 22.0 GrPts: 88.0000 GPA: 4.000				
Summer 2015-VPA-Comm&Rhetorical Studies Why Good People do Terbl Thing PSY400 3.0 A Attempted: 3.0 Earned: 3.0 GrPts: 12.0000 GPA: 4.000				
Continued on next column				
The e-Transcript is considered official in PDF format when retrieved directly from the Syracuse University secure server. It has a blue background and the university seal as watermark. An official transcript is imprinted with the signature of the University Registrar and the institutional seal in the section to the right. This document may not be released to a third party without the consent of the student.		  University Registrar		

June 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to highly recommend Ms. Page Garbee-Kim, who has applied for a clerkship in your chambers. Ms. Garbee-Kim possesses the excellent analytical, research and writing skills as well as the professionalism and drive that will make her a great law clerk for any judge who is fortunate enough to hire her.

I have had the privilege of getting to know Ms. Garbee-Kim in two courses at the University of Virginia School of Law. I first met Ms. Garbee-Kim when she took my seminar titled Law, Education and Inequality in the fall of 2019. The seminar analyzes how law and policy contributes to opportunity and achievement gaps in education and explores potential avenues for remedying these gaps and strengthening democracy. Ms. Garbee-Kim also took my spring 2022 Education Law Survey course, which provides an overview of a wide variety of education law issues, such as school desegregation, school funding, and school choice. Through these courses, I have had the opportunity to get to know Ms. Garbee-Kim well.

Throughout both courses, Ms. Garbee-Kim consistently offered insightful comments that built upon not only the reading, but also her own experiences as both a former teacher in a charter school in Washington, D.C. and someone who grew up with limited opportunities in a small town. Her perspective and the experiences that she shared in my courses deepened the understanding of her classmates and me regarding the topics that we studied. Ms. Garbee-Kim was always a professional, mature and engaged student who persuasively presented her thoughts on the course topics. In addition to her strong performance in my courses, Ms. Garbee-Kim distinguished herself amidst her many talented peers at the University of Virginia School of Law. She served as a 2L Senator for the Student Bar Association and earned a place on the Executive Board of the Virginia Journal of International Law while contributing to the community through volunteer work for such organizations as Virginia Law Women and Lambda Law Alliance.

My greatest insight into Ms. Garbee-Kim's potential to be an exceptional law clerk was through her paper for my seminar. She thoroughly synthesized social science research regarding how inequity in testing accommodations is evident in the overrepresentation of affluent, white students and the underrepresentation of poor, minority students. Ms. Garbee-Kim summarized and critiqued how the statutes that govern how schools address disabilities contributes to these challenges and she examined the law and policy scholarly proposals for reform. She then offered a multifaceted law and policy approach for addressing these challenges that would combine amendments to federal disability law that would remove barriers to equitable accommodations and increases to federal data collection to reduce accommodations awarded through fraudulent means while minimizing barriers to entry for minority students. Ms. Garbee-Kim's paper demonstrated that she possesses outstanding research, analytical and writing skills. Her research on the twin weaknesses of this area of disability law was thorough and comprehensive and her writing regarding the relevant law and policy was clear and cogent. She presented her analysis and arguments in a well-organized and logical format. She earned an A on the paper. Her first-rate analytical, research and writing skills will greatly benefit and support the work of any judge. In addition, her ability to present her analyses and insights in a clear, cogent and persuasive manner will cause her to be a valuable contributor to discussions within chambers.

Ms. Garbee-Kim's upbringing in a small town (Lynchburg, Virginia) with limited opportunities provided her with very little exposure to the legal profession. Nevertheless, she started to dream of becoming a lawyer at the age of seven and began sharing this dream with those around her. This dream led her to major in political science at Syracuse University and graduate at nineteen, with the intention of taking a few years off before going to law school. Ms. Garbee-Kim then began working as a teacher in a Washington, DC Public Charter School and found her passion and purpose: to find legal solutions to educational inequality. She decided that she wanted to help others experience the same opportunity mobility that education had afforded her. At the University of Virginia Law School, Ms. Garbee-Kim focused her energy and attention on preparing for her career in education law and policy by not only excelling in my education law courses, but also by participating in the Child Advocacy Clinic and serving on the Executive Board of Street Law. Ms. Garbee-Kim's early graduation from college reveals that the focus and determination that she displayed in law school began at a young age. After law school, Ms. Garbee-Kim accepted a job at Venable, a law firm that represents the most independent schools in the nation. She currently works at the intersection of education, employment, and litigation. After serving as a law clerk, Ms. Garbee-Kim hopes to pursue a career in education law at the United States Department of Education.

I encourage you to interview Ms. Garbee-Kim so that you may witness her many positive qualities for yourself. Please do not hesitate to contact me if I may provide more information about her. I may be reached at krobinson@law.virginia.edu or 404-308-6821 (cell).

Sincerely,

Kimberly Jenkins Robinson

Kimberly Robinson - krobinson@law.virginia.edu - 434-924-3181



600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

June 13, 2022

Mary M. Gardner

T 202.344.4398
F 202.344.8300
MMGardner@Venable.com

Re: Recommendation for Page Garbee Kim's Selection for a Federal Judicial Clerkship

To Whom it May Concern:

It is my pleasure to write this letter of recommendation for Page Garbee Kim in support of her application for a federal judicial clerkship. I highly recommend Page for a judicial clerkship.

I first met Page when she was a summer associate at Venable LLP in 2020. Page stands out as one of the most impressive candidates with whom I've worked in my (now) six years of work with Venable's summer associates. She assisted me with a complex assignment for a hospitality group regarding the availability of insurance proceeds for COVID-19 related business interruptions. Since returning to Venable in September 2021, I have worked with Page at every possible opportunity. Indeed, she is the first associate I turn to when I have a new case or research question. Page has assisted me with the following work assignments: She answered complicated research assignments in the insurance and advertising compliance fields, played an integral role in trial preparation for a case pending in the District of Maryland, drafted a substantive portion of a brief in opposition to a motion for summary judgment, and researched and drafted most of a response to an arbitration complaint.

Page has many strengths that make her an exceptional associate. In this letter, I would like to highlight four strengths that I believe make Page a highly competitive applicant for a judicial clerkship.

First, Page has strong research and writing skills. When Page was a summer associate, I evaluated her research and writing skills as comparable to those of a seasoned third- or fourth-year associate, rather than a law school student. Indeed, Page's final work product was so well done that I struggled to find constructive feedback to give her. Page has excelled in the two years that have passed. She recently drafted an almost 40-page response to an arbitration complaint—an assignment that I would usually give to a fourth- or fifth-year associate. She demonstrated a strong understanding of the facts of the case, her research uncovered compelling case law and statutory support for her argument, and her analysis of how the law applied to the facts was sound. Ultimately, her draft was clean, organized effectively, and well-written.

Second, Page is a strong communicator. The year that Page participated in Venable's summer program, the program was offered virtually with no opportunity to meet in person. Several



June 13, 2022

Page 2

candidates struggled with communication in a virtual office—but not Page. Page has continued to excel at communication in a hybrid office environment. She provides timely updates on the status of assignments and is comfortable communicating directly with clients. Significantly, Page is a strong and confident advocate. If she disagrees with my analysis of an issue, she will respectfully raise her concerns. These discussions with Page have become an integral part of my deliberative process.

Third, Page is well-organized. When Page is assigned to a new case, she prioritizes ensuring that the relevant documents are organized. In fact, I have derived great benefits from Page's disciplined approach to file management. When Page returned to Venable last year, she joined one of my pending cases and immediately took ownership of organizing the document repository.

Finally, Page is a pleasure to work with. She is collaborative, energetic, responsible, and hard working. Several days last week, Page worked late nights and early mornings, without losing her good-natured manner or sacrificing the quality of her work product.

I give my full recommendation to Page.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary M. Gardner".

Mary M. Gardner

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Page Garbee-Kim, a recent graduate of our law school, who has applied for a clerkship with you. Page received an A- in my course in Employment Discrimination. She was an active and effective participant in our class discussions and she has an exemplary record in law school. I am happy to recommend her to you.

Employment Discrimination is a demanding course, at several different levels. The burden of proof on a variety of issues is decisive in many cases. This introduces a degree of doctrinal complexity into the course. It also raises practical problems for attorneys bringing or defending against claims of employment discrimination. In close cases, everything turns on who has the burden of proof and what it requires. As a matter of principle, the course addresses the many different meanings of equal opportunity and how it can be implemented through the law. Page did quite well in navigating these different issues, both abstract and concrete in the course. She was also a lively and welcome presence in our class discussions.

Page has been very active in the life of the law school. She was the submissions editor on the Virginia Journal of International Law and served in a variety of other student organizations. She currently practices law as a litigation associate at the Venable firm in Washington, D.C. She expects to continue her career in litigation and she sees a clerkship as a valuable learning experience, where she can see first hand how cases are litigated and how decisions are made.

Just as a clerkship would contribute to her career plans, she would be a valuable addition to any judge's chambers. She met the disruptions to legal education caused by the pandemic with poise and equanimity, adjusting well to the remote learning and social distancing that has dominated the law school experience during her time in law school. Based on this experience, I believe she is well suited to meet the challenges of a clerkship. She has the intellectual and personal qualities to be an excellent law clerk and I strongly recommend her to you.

Very truly yours,

George Rutherglen
Distinguished Professor of Law
Earle K. Shawe Professor of Employment Law
University of Virginia School of Law
580 Massie Road Charlottesville, VA 22903-1738
PHONE: 434.924.7015
FAX: 434.924.7536
grutherglen@law.virginia.edu • www.law.virginia.edu

George Rutherglen - grutherglen@law.virginia.edu - (434) 924-7015

Page Garbee-Kim

1622 5th Street N.W., Unit B Washington, DC 20001 | pag8gy@virginia.edu | (434) 660-6397

The attached writing sample is a Reply Memorandum of Law in Support of a Motion for Summary Judgment that I drafted for a pro bono case, *Tempey v. U.S. Dep't of Homeland Sec.*, Case No. 20-cv-5212 (ENV)(SJB), which is currently pending in the United States District Court for the Eastern District of New York. Since filing, it has been lightly edited for clarity and includes additional facts and law from a previous briefing for context. While I was supervised by a partner, Ian Volner, the writing sample contains minimal revisions and represents my own work.

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
ARGUMENT.....	2
I. DHS IMPROPERLY APPLIED EXEMPTION 5.....	2
A. DHS Has Not Satisfied Its Burden to Show That the Deliberative Process Privilege Applies to Drafts of the Press Release.....	2
B. DHS Has Not Satisfied Its Burden to Show That the Deliberative Process Privilege Applies to Documents Post-Dating the Issuance of the Press Release.....	4
C. DHS Has Failed to Comply with FOIA’s Segregability Requirement.....	5
II. WHILE PLAINTIFF OPTED FOR LESSER INFORMATION, THERE IS NO PRIVACY INTEREST IN THE NAMES AND TITLES OF GOVERNMENT EMPLOYEES UNDER EXEMPTION 6.....	5
III. DHS HAS FAILED TO IDENTIFY A FORESEEABLE HARM, AS REQUIRED BY THE FOIA IMPROVEMENT ACT.....	7
CONCLUSION.....	8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amadis v. U.S. Dep't of State</i> , 971 F.3d 364 (D.C. Cir. 2020).....	7
<i>Am. Oversight v. U.S. Gen. Sers. Admin.</i> , 311 F. Supp. 3d 327 (D.D.C. 2018).....	6
<i>Becker v. IRS</i> , 34 F.3d 398 (7th Cir. 1994).....	2
<i>Brinton v. U.S. Dep't of State</i> , 636 F.2d 600 (D.C. Cir. 1980).....	4
<i>Buzzfeed, Inc. v. U.S. DOJ</i> , 419 F. Supp. 3d 69 (D.D.C. 2019).....	4, 5
<i>Campaign Legal Ctr. v. U.S. DOJ</i> , 34 F.4th 14 (D.C. Cir. 2022).....	3, 4
<i>Cook v. Nat'l Archives & Recs. Admin.</i> , 758 F.3d 168 (2d Cir. 2014).....	2, 4
<i>Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.</i> , 436 F. Supp. 3d 90 (D.D.C. 2019).....	5
<i>Grand Cent. P'ship, Inc. v. Cuomo</i> , 166 F.3d 473 (2d Cir. 1999).....	4, 5
<i>Jud. Watch, Inc. v. Dep't of the Navy</i> , 25 F. Supp. 3d 131 (D.D.C. 2014).....	6
<i>Jud. Watch, Inc. v. FDA</i> , 449 F.3d 141 (D.C. Cir. 2006).....	4
<i>Jud. Watch, Inc. v. U.S. Dep't of Com.</i> , 375 F. Supp. 3d 93 (D.D.C. 2019).....	7
<i>Katzman v. Freeh</i> , 926 F. Supp. 316 (E.D.N.Y. 1996).....	2
<i>Leadership Conf. on C. R. v. Gonzales</i> , 404 F. Supp. 2d 246 (D.D.C. 2005).....	6

<i>Mead Data Ctr., Inc. v. U.S. Dep't of Air Force</i> , 566 F.2d 242 (D.C. Cir. 1977).....	5
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	8
<i>Osen LLC v. U.S. Cent. Command</i> , No. 18-cv-6069, 2019 WL 4805805 (S.D.N.Y. Sept. 30, 2019).....	7
<i>Petroleum Info. Corp. v. U.S. Dep't of Interior</i> , 976 F.2d 1429 (D.C. Cir. 1992).....	3
<i>Renegotiation Bd. v. Grumman Aircraft</i> , 421 U.S. 168 (1975).....	3
<i>Reps. Comm. for Freedom of the Press v. FBI</i> , 3 F.4th 350 (D.C. Cir. 2021).....	3
<i>Seife v. FDA</i> , 43 F.4th 231 (2d Cir. 2022).....	7
<i>Tummino v. Von Eschenbach</i> , No. CV 05-366 (ERK)(VVP), 2006 U.S. Dist. LEXIS 81286 (E.D.N.Y. Nov. 6, 2006).....	8
<i>U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.</i> , 141 S. Ct. 777 (2021).....	4
<i>W. Chi. v. U.S. Nuclear Regul. Comm'n</i> , 547 F. Supp. 740 (N.D. Ill. 1982).....	8
Statutes	
5 U.S.C. § 552(a)(4)(B).....	2, 4
5 U.S.C. § 552(a)(6)(A)(i).....	1
5 U.S.C. § 552(a)(6)(A)(i)(I).....	1
5 U.S.C. § 552(a)(8)(A).....	7
5 U.S.C. § 552(b)(5)-(6).....	2
5 U.S.C. § 552(b)(9).....	5

Secondary Sources

DEP’T OF HOMELAND SEC., Q&A: DHS IMPLEMENTATION OF THE EXECUTIVE ORDER ON BORDER
SECURITY AND IMMIGRATION ENFORCEMENT (2017)..... 3

H.R. REP. NO. 114-391 (2016)..... 5

PRELIMINARY STATEMENT

The Department of Homeland Security (“DHS,” “Defendant,” or “Agency”) invokes the deliberative process exemption to shield the identity of the individual(s) who may have embedded white-supremacist messaging in an official government press release (the “Press Release”). While DHS characterizes its actions as cooperative, Def.’s Reply at 1, the Agency omits and obscures several pertinent facts from the timeline, revealing that it has been delaying and obfuscating the release of statutorily mandated information.

Plaintiff submitted a Freedom of Information Act (“FOIA”) request to DHS on August 9, 2018 (the “Request”). Tempey Decl. at ¶ 7; Def.’s 56.1 Stmt. at ¶ 5. Plaintiff’s Request sought documentation, background material, messages, and correspondence related to the drafting of the Press Release. Tempey Decl. at ¶ 7; Def.’s 56.1 Stmt. at ¶ 6. Despite its statutory obligation to respond to FOIA requests within 20 working days, DHS did not provide a substantive response to Plaintiff’s Request until nearly two years later. Tempey Decl. at ¶ 14; Def.’s 56.1 Stmt. at ¶ 10; 5 U.S.C. § 552(a)(6)(A)(i).

On March 27, 2020, James V.L.M. Holzer, Deputy Chief FOIA Officer for DHS, denied Plaintiff’s Request. Tempey Decl. at ¶ 14; Def.’s 56.1 Stmt. at ¶ 10. In lieu of producing responsive materials to Plaintiff’s Request, DHS referred Plaintiff to twenty-four pages of heavily redacted documents posted to DHS’s website. *Id.* The Agency’s final response took over 400 working days to process and failed to outline the reasons underlying the agency’s response as the statute requires. *See* 5 U.S.C. § 552(a)(6)(A)(i)(I). After exhausting all applicable administrative remedies, Plaintiff brought this action on November 12, 2020, alleging that DHS failed to conduct a proper or sufficient search for records responsive to Plaintiff’s Request in violation of its obligations under FOIA. Tempey Decl. at ¶¶ 15-16; Def.’s 56.1 Stmt. at ¶ 14. Thereafter, the

parties were able to negotiate an expanded search, and on March 16, 2022, DHS produced an additional 236 pages of documents. Tempey Decl. at ¶ 17; Def.'s 56.1 Stmt. at ¶¶ 16-17. However, DHS continues to shirk its obligations under FOIA. The vast majority of the pages provided are either duplicative and/or heavily redacted. DHS claims its redactions and withholdings are justified under Exemptions 5 and 6 of FOIA. *See Vaughn Index; see also* 5 U.S.C. § 552(b)(5)-(6). Critically, all draft versions of the Press Release are withheld in their entirety. March 16 Document Production, Bates Stamp Nos. DHS-001-02512-000004 through DHS-001-02512-000018; August 3 Document Production, Bates Stamp Nos. DHS-001-02512-000237 through DHS-001-02512-000245. As such, the documents fail to shed any light on the pertinent issues at hand, including the entire universe of people involved in the Press Release, the drafting history of the Press Release, or how DHS decided on the incendiary title of the Press Release.

Defendant's extensive redaction of these documents under broad claims of exemption pursuant to Exemptions 5 and 6 is a continued attempt by the Government to sidestep its FOIA obligations. The burden to justify its withholding lies with DHS, and it has failed to meet this burden. *Cook v. Nat'l Archives & Recs. Admin.*, 758 F.3d 168, 173 (2d Cir. 2014) (quotation marks and citation omitted). *See also* 5 U.S.C. § 552(a)(4)(B). Because courts should construe FOIA exemptions narrowly, and analyze facts and inferences in the light most favorable to the requester, Plaintiff's Cross-Motion for Summary Judgment should be granted, and Defendant's Motion should be denied. *Katzman v. Freeh*, 926 F. Supp. 316, 320 (E.D.N.Y. 1996) (citing *Becker v. IRS*, 34 F.3d 398, 405 (7th Cir. 1994)).

ARGUMENT

I. DHS IMPROPERLY APPLIED EXEMPTION 5.

A. DHS Has Not Satisfied Its Burden to Show That the Deliberative Process

Privilege Applies to Drafts of the Press Release.

DHS's application of Exemption 5 to drafts of the Press Release and other associated communications was improper because the Press Release conveys a prior agency decision and is therefore not deliberative. While documents reflecting judgment calls about how to convey an agency decision may be properly withheld, the exemption only applies to the "document that first communicates a policy decision." *Campaign Legal Ctr. v. U.S. DOJ*, 34 F.4th 14, 24 (D.C. Cir. 2022) (emphasis added). This is because this initial document may "shape[] and sharpen[] the underlying policy judgment or [] have direct consequences for ongoing agency programs and policies." *Id.* (citing *Reps. Comm. for Freedom of the Press v. FBI*, 3 F.4th 350, 362-64 (D.C. Cir. 2021)). Here, as Defendant acknowledges, this Press Release was not the first document to communicate the Trump administration's plan to ensure border security. Def.'s Reply at 4 (discussing the issuance of Executive Order 13767). Nor was the Press Release the Agency's first communication on the matter. For example, on February 21, 2017, DHS issued a document "designed to answer some frequently asked questions about how the Department will operationally implement the guidance provided by [EO 13767]." ¹ Defendant cannot claim that these documents reflect deliberation on "how to best relay to the public that the former administration, through DHS, intended to ensure border security and its reasons for favoring a border wall" when the public was already informed of the decision in the months and years prior. Def.'s Reply at 5. Therefore, the Press Release is an advocacy piece, created to "support a decision already made." *Petroleum Info. Corp. v. U.S. Dep't of Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992) (quoting *Renegotiation Bd. v. Grumman Aircraft*, 421 U.S. 168, 184 (1975)). As such, its drafts are not properly withheld under Exemption 5.

¹ DEP'T OF HOMELAND SEC., Q&A: DHS IMPLEMENTATION OF THE EXECUTIVE ORDER ON BORDER SECURITY AND IMMIGRATION ENFORCEMENT (2017).

Additionally, the deliberative process privilege protects documents only if they are *both* deliberative and pre-decisional. *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999) (internal citations omitted). A document is pre-decisional if it is “generated before the adoption of an agency policy.” *Jud. Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006). Documents that simply “promulgate or implement an established policy of an agency” are not pre-decisional. *BuzzFeed, Inc. v. U.S. DOJ*, 419 F. Supp. 3d 69, 76 (D.D.C. 2019) (citing *Brinton v. U.S. Dep't of State*, 636 F.2d 600, 605 (D.C. Cir. 1980)). Where an agency “hides a functionally final decision in draft form, the deliberative process privilege will not apply. After all, what matters is not whether a document is last in line, but whether it communicates a policy on which the agency has settled.” *Campaign Legal Ctr*, 34 F.4th at 24 (quoting *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 786-88 (2021) (internal quotation marks and alterations omitted) (emphasis added).

The Agency’s own language in its February 21, 2017 Q&A indicates it is hiding a functionally final decision as a draft. Specifically, DHS states that the Q&A provides guidance on how the Agency “will operationally implement [EO 13767].” This is a strong indicator that the Q&A, and the subsequent Press Release at issue, is implementing the border policy that was established years before. Therefore, drafts of the Press Release and associated communications are not pre-decisional and may not be withheld pursuant to Exemption 5. Defendant has failed to meet its burden to justify the withholding. *Cook*, 758 F.3d at 173; 5 U.S.C. § 552(a)(4)(B).

B. DHS Has Not Satisfied Its Burden to Show That the Deliberative Process Privilege Applies to Documents Post-Dating the Issuance of the Press Release.

Defendant’s justification for withholding the documents created after the issuance of the Press Release is similarly unpersuasive. While Exemption 5 may apply to communications regarding an agency’s potential response, the agency must establish a link to a document that is

both pre-decisional and deliberative for the Exemption to apply. *See Grand Cent. P'ship, Inc.*, 166 F.3d at 482 (holding Exemption 5 “does not protect a document which is merely peripheral to actual policy formation”). Without this limitation, agencies would be permitted to withhold swaths of information by tying it to any decision, no matter how insignificant, creating the “overuse” of Exemption 5 that Congress viewed as a particular threat. *Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.*, 436 F. Supp. 3d 90, 105 (D.D.C. 2019) (quoting H.R. REP. NO. 114-391, at 10 (2016)). Because the Press Release underlying the discussions is neither deliberative nor pre-decisional, the Court should reject the Defendant’s application of Exemption 5 to documents post-dating the Press Release.

C. DHS Has Failed to Comply with FOIA’s Segregability Requirement.

The Agency’s failure to segregate portions of the record is also a violation of its obligations under FOIA. While DHS claims that it need not disclose factual information that is “inextricably intertwined,” Def.’s Reply at 10, “[i]t is only in exceptional circumstances that ‘disclosure of even purely factual material may so expose the deliberative process within an agency that it must be deemed exempted.’” *BuzzFeed*, 419 F. Supp. 3d at 77 (emphasis added) (quoting *Mead Data Ctr., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977)). This circumstance is not exceptional. As explained in Section I.A, the agency’s choice of facts does not reveal the deliberative process because the policy decision was set in stone in the months and years prior. As such, the Defendant failed to disclose reasonably segregable portions of the record and did not discharge its obligations under FOIA. *See* 5 U.S.C. § 552(b)(9).

II. WHILE PLAINTIFF OPTED FOR LESSER INFORMATION, THERE IS NO PRIVACY INTEREST IN THE NAMES AND TITLES OF GOVERNMENT EMPLOYEES UNDER EXEMPTION 6.

Defendant’s withholding of the names and titles of staff members involved in drafting the Press Release is also improper. There is no privacy interest in the names or job titles of government

employees, even at the staff level. *See Leadership Conf. on C. R. v. Gonzales*, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (finding no privacy interest in the names and telephone numbers of DOJ paralegals under Exemption 6, because “[a] name and work telephone number is not personal or intimate information . . . that normally would be considered protected information under Exemption 6.”). Exemption 6 does not categorically exempt individuals’ identities, as the privacy interest at stake varies depending on the context in which it is asserted. *Am. Oversight v. U.S. Gen. Servs. Admin.*, 311 F. Supp. 3d 327, 346 (D.D.C. 2018). Rather, the Exemption 6 analysis requires balancing the privacy interests in nondisclosure against the public interest in disclosure. *Id.* at 345. “[U]nless the invasion of privacy is ‘clearly unwarranted,’ the public interest in disclosure must prevail.” *Id.* Here, the public interest outweighs the privacy interests because Defendant’s harm is speculative. Additionally, the release of the employees’ names, titles, and positions is in the public interest given the stakes and demonstrated public outcry and concern.

Defendant’s speculative harm to a privacy interest is not sufficient to warrant nondisclosure under FOIA Exemption 6. *Jud. Watch, Inc. v. Dep’t of the Navy*, 25 F. Supp. 3d 131, 142 (D.D.C. 2014) (holding the potential adverse consequences of disclosure must be real rather than speculative, and a bare assertion that a document’s disclosure would constitute a clearly unwarranted invasion of an individual’s personal privacy insufficient). Defendant’s claims of the potential for “invasive harassment,” without more, is not sufficient. Def.’s Reply at 8.

Additionally, the inclusion of a white-supremacist dog whistle in a DHS press release is serious, and the public has a genuine interest in the disclosure of the person(s) who were involved in the Press Release. In particular, the public has a heightened interest in the identities of the staff members who requested or provided information that was later used in the Press Release and were clearly involved in its drafting. *Compare Vaughn Index*, Bates Stamp Nos. DHS-001-02512-

000001 through DHS-001-02512-000003 (“The number of credible fear screening referrals has risen from fewer than 5,100 in 2008 to nearly 92,000 screenings in 2016 – a 1,700 percent increase.”) *with* Press Release (“There has been a 1,700 percent increase in Credible Fear receipts from 2008 to 2016.”). Despite Defendant’s assertions to the contrary, disclosure of these names, as well as their positions and titles, would clearly “further the public’s understanding of DHS’s operations and activities” as it pertains to the drafting and response to the Press Release. Def.’s Reply at 10. *See also Osen LLC v. U.S. Cent. Command*, No. 18-cv-6069, 2019 WL 4805805, at *5 (S.D.N.Y. Sept. 30, 2019). As such, Plaintiff is entitled to the names of the employees, although initially opted to request the mere job titles of the relevant employees as a lesser request for information.

III. DHS HAS FAILED TO IDENTIFY A FORESEEABLE HARM, AS REQUIRED BY THE FOIA IMPROVEMENT ACT.

To satisfy its burden under the FOIA Improvement Act, the Agency must show that disclosure of the requested information would foreseeably harm a protected interest or that disclosure is prohibited by law; otherwise, it must disclose the information, even if the information falls within one of the FOIA exemptions. 5 U.S.C. § 552(a)(8)(A). Applicability of a FOIA exemption is still necessary—but no longer sufficient—for an agency to withhold the requested information. *Seife v. FDA*, 43 F.4th 231, 235 (2d Cir. 2022). Defendant’s Reply continues to offer generalized, speculative assertions regarding the harm that disclosure will bring, which is insufficient to overcome its burden. *Jud. Watch, Inc. v. U.S. Dep’t of Com.*, 375 F. Supp. 3d 93, 100 (D.D.C. 2019) (speculation about potential harm and boilerplate justifications are insufficient); *Amadis v. U.S. Dep’t of State*, 971 F.3d 364, 371 (D.C. Cir. 2020) (an agency’s burden cannot be satisfied with “generalized assertions”).

Defendant asserts that the redactions were necessary to protect its interest in candor among

employees. However, where a protected interest under Exemption 5 conflicts with a competing public interest, such as alleged government malfeasance, the exemption should be denied. *Tummino v. Von Eschenbach*, No. CV 05-366 (ERK)(VVP), 2006 U.S. Dist. LEXIS 81286, at *26-30 (E.D.N.Y. Nov. 6, 2006). Defendant's Reply does not contain any justification for why its interest in candor outweighs the competing interest of uncovering agency malfeasance. While Defendant attempts to characterize the public interest as a "purely speculative smoking gun," Def.'s Reply at 2, this characterization minimizes the disturbing nature of the headline and its striking similarities to white-supremacist propaganda. Additionally, the Agency's argument is circular. It claims there is nothing of note within the documents, and therefore, disclosure is unwarranted. If so, then the Agency proves Plaintiff's point that the government's interest is minimal.

Thus, even assuming *arguendo* that the exemptions claimed were sound (they are not), the deliberative process exemption should be denied because there is no foreseeable harm in the release of the documents. Furthermore, the Agency's public confusion rationale is defunct as a matter of law because withholding due to risk of misinformation is "condescending and at odds with the spirit of the FOIA." *W. Chi. v. U.S. Nuclear Regul. Comm'n*, 547 F. Supp. 740, 748 (N.D. Ill. 1982). Therefore, none of the reasons offered by Defendant are persuasive, and Defendant fails to meet its burden under the FOIA Improvement Act.

CONCLUSION

At its most basic level, the Freedom of Information Act safeguards the public's First Amendment right to know what decisions the government has made in its name and why it has made them. *See, e.g., N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 282 (1964). FOIA's deliberative process exemption allows the Government to serve the American public, free from interference, by limiting public disclosure. However, that protection ends when the deliberative process ends

and cannot justify suppression of information about the underpinnings of a settled policy determination, which the government seeks to defend on controversial terms. For the foregoing reasons, Plaintiff respectfully requests that the Court grant his Cross-Motion for Summary Judgment and deny Defendant's Motion.

Applicant Details

First Name	Hannah
Middle Initial	V
Last Name	George
Citizenship Status	U. S. Citizen
Email Address	hvlgeorge@uchicago.edu
Address	<div> Address Street 6104 S Woodlawn Ave. Apt 410 City Chicago State/Territory Illinois Zip 60637 Country United States </div>
Contact Phone Number	9709803695

Applicant Education

BA/BS From	Rice University
Date of BA/BS	May 2021
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 1, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	The University of Chicago Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Wilf-Townsend, Daniel
dwilftownsend@uchicago.edu
773-702-9494

Futterman, Craig
futterman@uchicago.edu
773-702-9494

Hubbard, William
whhubbar@uchicago.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Hannah Vinh-Lee George
6104 S. Woodlawn Ave. Apt. 410, Chicago, IL 60637 || 970-980-3695 ||
hvlgeorge@uchicago.edu

June 11, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship position in your chambers for the 2024–25 term.

I am confident that I will meaningfully contribute to the work of the District Court for the Eastern District of Virginia. As an intern for the Civil Rights and Police Accountability Project, I researched and analyzed the viability of civil rights claims. This year, I will file motions on behalf of my clients and argue cases in Cook County Circuit Courts and/or the Northern District of Illinois. As a member of the *University of Chicago Law Review*, I substantively edited multiple articles and wrote a Comment on a potential Circuit split regarding the Americans with Disabilities Act. In my role as an editor, I guide staffers through the Comment writing process, from generating topics to providing substantive feedback and helping with publication.

Enclosed please find my résumé, a writing sample, and my transcript. Arriving separately are three letters of recommendation from Professor Craig B. Futterman, Professor Daniel Wilf-Townsend, and Professor William H. J. Hubbard.

Respectfully,



Hannah V. L. George

Hannah Vinh-Lee George

6104 S. Woodlawn Ave. #410, Chicago, IL 60637 || (970) 980-3695 || hvlgeorge@uchicago.edu

EDUCATION

THE UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL June 2024

Candidate for Juris Doctor

Activities: The University of Chicago Law Review, Comments Editor (2023-2024), Staffer (2022-2023)
Asian Pacific American Law Student Association, 3Lder (2023-2024), Outreach Director (2022-2023)
OutLaw
Law Women's Caucus

WILLIAM MARSH RICE UNIVERSITY, Houston, TX May 2021

B.A., *cum laude*, Cognitive Sciences and Psychology; Minor in Politics, Law, and Social Thought

Honors: Psi Chi – International Honor Society in Psychology; President's Honor Roll

Activities: Rice University Vietnamese Student Association, Co-President
Office of Multicultural Affairs, Diversity Facilitator

UNIVERSITY COLLEGE LONDON, London, United Kingdom Jul. – Aug. 2019

Completed courses on psycholinguistics and 20th century British periodicals through a six-week summer abroad program.

EXPERIENCE

O'Melveny & Myers, Washington, DC Current
2L Summer Associate

Edwin F. Mandel Legal Aid Clinic, Chicago, IL June 2022 – Current
Clinic Intern, Civil Rights and Police Accountability Project

- Drafted internal memorandums on the viability of § 1983 claims and damages for sexual assaults for clients.
- Researched police department policies in major cities and relevant municipal and state law to support amendments to Chicago Police Department policies under the 2015 Consent Decree. Helped draft report on CPD Force Training.
- Interviewed attorneys and staff in the Law Office of the Cook County Public Defender to propose recommendations for office processes on public defender advocacy out of the courtroom. Drafted, in collaboration with other clinic interns, a print report for the office containing our findings and recommendations.

U.S. District Court for the Southern District of Texas, Houston, TX Jan. 2020 – Apr. 2020
Federal Judicial Intern, Chief Judge Lee H. Rosenthal

- Shadowed in the courtroom for summary judgments, presentation of expert testimony, and criminal sentencing.
- Researched case law regarding the Comprehensive Environmental Response, Compensation, and Liability Act.
- Drafted a partial opinion on a motion to dismiss for failure to state a claim.

Rice University Dept. of Psychological Sciences & Dept. of Sociology, Houston, TX Aug. 2019 – May 2021
Teaching Assistant & Grader

- Administered and graded exams and assignments for three classes in the Department of Psychological Sciences.
- Graded for two classes, including "Sociology of Law," in the Department of Sociology.

Rice University Office of Admissions, Houston, TX Aug. 2020 – Dec. 2020
Senior Interviewer

- Evaluated prospective students on their strengths in academic curiosity, leadership/impact on community, communication skills, and interest in the university through one-on-one virtual interviews.

Hebl/King Lab, Rice University Dept. of Psychological Sciences, Houston, TX Aug. 2018 – Dec. 2020
Research Assistant

- Collected data on public response to a family's acts of forgiveness after a racially motivated murder.
- Conducted research as a confederate in field studies involving race relations and socioeconomic status.
- Transcribed interviews conducted with Muslim men about discrimination in the workplace.

LAW TRANSCRIPT

Hannah George

hvlgeorge@uchicago.edu

(970) 980-3695

Attached is my law school transcript as of June 2023. There are some grades missing on this transcript:

1. Clinic grades for the whole year are released after the spring quarter. I am waiting on the publication of these grades, but if you have inquiries about my performance, my recommender Craig B. Futterman is also my clinic supervisor.
2. Human Trafficking & Regulation of Sexuality: Both of these classes are essay-based, and as of the submission of this transcript, these essays are not yet due.

Please let me know if you have any further questions about this transcript.

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED



Name: Hannah Vinh-Lee George
Student ID: 12334911

Scott C. Campbell, University Registrar

University of Chicago Law School

Summer 2022

Honors/Awards

The University of Chicago Law Review, Staff Member 2022-23

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Program Status: Active in Program
J.D. in Law

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 43228	Local Government Law Lee Fennell	3	3	177
LAWS 45801	Copyright Randal Picker	3	3	177
LAWS 90913	Civil Rights Clinic: Police Accountability Craig Futterman	2	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

External Education

William Marsh Rice University
Houston, Texas
Bachelor of Arts 2021

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	180
LAWS 46101	Administrative Law David A Strauss	3	3	176
LAWS 53132	Human Trafficking and the link to Public Corruption Virginia Kendall	3	0	
LAWS 90913	Civil Rights Clinic: Police Accountability Craig Futterman	1	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Beginning of Law School Record

Autumn 2021

Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law Richard McAdams	3	3	177
LAWS 30211	Civil Procedure Diane Wood	4	4	177
LAWS 30611	Torts Saul Levmore	4	4	177
LAWS 30711	Legal Research and Writing Daniel Wilf-Townsend	1	1	178

Winter 2022

Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law John Rappaport	4	4	177
LAWS 30411	Property Thomas Gallanis Jr	4	4	181
LAWS 30511	Contracts Bridget Fahey	4	4	177
LAWS 30711	Legal Research and Writing Daniel Wilf-Townsend	1	1	178

Spring 2022

Course	Description	Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Daniel Wilf-Townsend	2	2	178
LAWS 30713	Transactional Lawyering Joan Neal	3	3	175
LAWS 43220	Critical Race Studies William Hubbard	3	3	180
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	179
LAWS 47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	176

Spring 2023

Course	Description	Attempted	Earned	Grade
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	177
LAWS 41601	Evidence John Rappaport	3	3	177
LAWS 43229	Regulation of Sexuality Mary Anne Case	3	0	
LAWS 90913	Civil Rights Clinic: Police Accountability Craig Futterman	1	0	
LAWS 94110	The University of Chicago Law Review Meets Substantial Research Paper Requirement	1	1	P

Designation:

Anthony Casey

Send To:

Hannah George
6104 S Woodlawn Ave Apt 410
Chicago, IL
60637-2834

End of University of Chicago Law School

Date Issued: 06/03/2023

Page 1 of 1

KEY TO TRANSCRIPT ON FINAL PAGE

OFFICIAL ACADEMIC DOCUMENT



THE UNIVERSITY OF CHICAGO

Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR No Grade Reported:** No final grade submitted
- P Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q Query:** No final grade submitted (College only)
- R Registered:** Registered to audit the course
- S Satisfactory**
- U Unsatisfactory**
- UW Unofficial Withdrawal**
- W Withdrawal:** Does not affect GPA calculation
- WP Withdrawal Passing:** Does not affect GPA calculation
- WF Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality**
- P* High Pass**
- P Pass**

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016

Daniel Wilf-Townsend
Associate Professor of Law
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, D.C., 20001
daniel.wilftownsend@georgetown.edu

May 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to strongly recommend Hannah George to you as a law clerk. I met Hannah when I was a Bigelow Fellow at the University of Chicago Law School, where I taught legal research and writing during her 1L year. Over the course of this yearlong class, I got to know Hannah as a person and see the strength of her work, and I think she would make an excellent law clerk.

Hannah stood out to me at the start of the year just because of the coincidence that we both grew up in Colorado. While I grew up near Denver, Hannah grew up in Aspen—a town in the mountains whose name is associated with luxury ski vacations, but one that can nonetheless feel isolated and somewhat rural for its full-time residents. Hannah's mother is a refugee from Vietnam, and her father never graduated from college. From this relatively humble background, Hannah came to the University of Chicago Law School, where she stood out amongst her peers for her confidence. Hannah's direct, focused approach was obvious in class from the beginning, and she brought a healthy skepticism to legal rules that will serve her excellently as a lawyer.

Hannah's confidence translated well into her work product. The first draft of her first assignment was rough in places, but the writing stood out compared to her peers as particularly direct, active, and well-organized. And where Hannah really shown was her ability to improve. She was in the top few students in the class in terms of her ability to respond to feedback and improve her work product. And she carried her development forward into her subsequent assignments, turning in an open-universe memo (her next assignment) that was not only well written but that also covered the key legal concepts well and that integrated legal materials into her analysis quite well—a skill that many students are still struggling with at that point, which is just a few months into law school.

Hannah's spring brief was also quite effectively done. For this assignment, students were assigned a side in a relatively tricky issue of Article III standing that forced them to grapple with some of the nuances of the Supreme Court's opinion in *TransUnion v. Ramirez*. The prompt involved a merchant selling U Chicago apparel and a data breach lawsuit. Hannah did a very good job identifying and thoughtfully discussing all of the relevant legal issues. And her brief stood out in particular for her use of secondary sources to provide important context about how the world works, providing information about credit freezes and the market for consumer credit that was relevant and useful for her legal points. Many students have trouble integrating legal arguments in the case law with the "real world" outside of the classroom, and Hannah's brief was an excellent example of how going the extra mile can make for a much more compelling presentation.

Hannah also stood out to me throughout the year for her willingness to advocate for her peers. There were a couple of moments of collective strife among her classmates over the course of the year—one involving the LRW program at Chicago, and one involving a different class—in which Hannah emailed me asking for support or information. These were, I imagine, quite difficult emails to write, as they brought some insecurities and vulnerabilities out in the open, and also included some criticism. But Hannah was polite, professional, and productive in her approach, and I got the sense that she was essentially "taking one for the team" by being the one to reach out to me—putting herself out there in a way that allowed her fellow students to remain anonymous, but giving voice to a collective grievance. This, to me, showed both significant maturity and moral courage, two features that I rate very highly and that are useful in the legal profession in particular.

As I hope all of this indicates, I think that Hannah would make an excellent law clerk. She is in strong shape on the technical legal research and writing skills that a clerk needs, and she has numerous personal qualities that will make her an excellent lawyer. I hope you will give Hannah serious consideration, and I would be happy to speak further via email (daniel.wilftownsend@georgetown.edu) or phone (303-594-0225) if it would be at all useful.
Sincerely,

Daniel Wilf-Townsend
Associate Professor of Law
Georgetown University Law Center

Daniel Wilf-Townsend - dwilftownsend@uchicago.edu - 773-702-9494



THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

1111 East 60th Street | Chicago, Illinois 60637
PHONE (773) 702-9611 | FAX (773) 702-2063
E-MAIL futterman@uchicago.edu
www.law.uchicago.edu

Craig B. Futterman
Clinical Professor of Law

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Recommendation for Hannah Vinh-Lee George

Dear Judge Walker:

I enthusiastically recommend Hannah V.L. George as a judicial clerk.

Hannah worked as a summer law clerk in the University of Chicago Law School's Civil Rights and Police Accountability Clinic, which I direct, following her first year of Law School. She then enrolled in the Clinic throughout her 2L year. She has worked on a variety of cases and projects including: (1) a federal civil rights consent decree to redress a pattern and practice of excessive and discriminatory force by the Chicago Police Department (CPD); (2) an individual criminal state post-conviction case; (3) the investigation of three potential civil rights lawsuits involving claims of police abuse; (4) researching and drafting a municipal police accountability ordinance; and (5) a project with the Office of the Cook County Public Defender to identify systemic problems in the criminal legal system that disadvantage their clients and advocate for change. While in the Clinic, Hannah performed a substantial amount of legal research and writing; investigated civil rights claims; interviewed clients, witnesses, and attorney and community partners; developed and delivered oral presentations; counseled clients; and worked as a part of a team with fellow law students. She will be eligible to appear in court under my supervision in her 3L year under the Illinois law student practice rules.

Hannah is a solid writer. As a part of our advocacy to enforce the consent decree referenced above, Hannah researched national best practices for obtaining, executing, and reviewing residential search warrants alongside governing constitutional and state and local law. (We had brought an enforcement action to stop ongoing violent Chicago police home raids targeting families in Black and Brown communities.) Hannah and her fellow summer law clerk produced an excellent brief that persuaded the federal judge overseeing the consent decree to convene court-supervised settlement negotiations on CPD search warrant policies between our clients (community-based organizations with members who are most impacted by CPD home raids), the Police Department, the Illinois Attorney General, and the Independent Monitor of the Consent Decree. In a separate project with the Cook County Public Defender's Office, Hannah drew upon her thoughtful interviews of attorneys and staff to co-author an outstanding report to launch the Defender Advocacy Initiative—an initiative to position the Office to engage in advocacy outside the courtroom. Hannah also delivered a powerful oral presentation about her report to

the Cook County Public Defender and his leadership team. Among the insights that Hannah and her cohorts shared were methods by which the Office can harvest specialized knowledge and data from within about barriers to justice faced by their clients. Due in no small part to Hannah's contributions, one of the largest unified public defender offices in the United States has improved individual client representation and become a powerful advocate for systemic change with their clients. The innovations in Cook County serve as a national model for other public defender agencies.

Hannah also did solid work with individual Clinic clients, in researching potential municipal liability arising from an on-duty police officer's repeated sexual assaults of our client when she was a child in one case and assessing whether and when Fourth Amendment excessive force claims accrued in a case in which our client had been convicted of battering a police officer. In the latter case, Hannah uncovered evidence that the police officer had engaged in a pattern of committing excessive force and initiating false assault and battery charges against his victims to cover up his brutality. She is currently litigating our client's post-conviction petition in state court. The police officer has since been placed on a "Do Not Call" list by the local prosecutor.

Hannah's initiative and enthusiasm for the law set her apart from fellow University of Chicago Law students. In just her 2L year, she has assumed the lead over three different student teams in investigating the viability of civil rights claims alleged by potential Clinic clients. She led the teams in formulating and executing investigative and research plans. The legal aspects of the investigations raise comparable questions to those that come before courts in response to motions to dismiss and motions for summary judgment and provide excellent preparation to serve as a clerk. Her analytic skills are also top notch. She has shown facility with managing and analyzing large document productions in her investigations. For example, the spreadsheets Hannah generated to analyze the pattern of misconduct complaints and lawsuits against the police officer who had filed criminal aggravated battery charges against our client formed the heart of our memorandum in support of our client's post-conviction petition.

Overall, Hannah is a pleasure to work with. She is engaging and thoughtful. She possesses strong communication skills and sound judgment. She is a critical thinker who asks incisive questions that cut to the point. She is not shy about offering critical feedback, and she presents it in a respectful and constructive manner. Her insights revealed ways for me to better structure our pilot project with the Public Defender's Office to maximize impact and learning by my students. She has made me a better teacher.

Hannah's personal background also sets her apart from her peers and situates her to be an excellent judicial clerk. The sensibilities Hannah developed as a child have engendered an understanding of diverse individuals and groups who come before the court, particularly of people who have been subject to discrimination. Having grown up in a white community as a biracial girl with a Vietnamese immigrant mother and white father and being one of only two queer girls of color in her large Colorado high school, Hannah often felt alone. She was made to feel as though she did not fully belong in any single community. On the one hand, she feared rejection from her Vietnamese family due both to her gender identity and her white father. On the other hand, she was stereotyped by her white peers and teachers in her school. She shared with me a particularly poignant childhood story that has stuck with her to this day. Her father

had come to her middle school classroom to drop off a “sweet treat” for her birthday. Her teacher saw Hannah’s father kiss her on her forehead as he dropped off the snack. Shortly after her dad left, Hannah’s teacher asked, “Are you adopted?”

As a result of her experiences, Hannah possesses empathy for people who find themselves on the outside looking in. These experiences and her fascination with the law are what drove Hannah to law school. Just as she has hurdled over obstacles that have blocked her path, she went to law school to eradicate barriers that can deny people the freedom to pursue their dreams. Those same experiences continue to drive her to be an outstanding clerk. Hannah cares deeply about doing justice. About treating all people fairly.

I have no reservations in recommending Hannah as a judicial clerk. Please do not hesitate to call me at (773) 834-3135 if you would like to discuss her candidacy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig B. Futterman', with a stylized, cursive script.

Craig B. Futterman

William H. J. Hubbard
Professor of Law
University Of Chicago Law School
1111 East 60th Street | Chicago, Illinois 60637
phone 773-834-8999 | fax 773-702-0730
e-mail whubbard@uchicago.edu
www.law.uchicago.edu

May 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Hannah George for a judicial clerkship. Hannah is a thoughtful, dedicated, and creative student who has thrived in the intense intellectual environment of the University of Chicago Law School. Hannah has a love of the law and is eager to clerk. She will work hard for you as a clerk, and I know that as a clerk she will take great pride in working hard to get the law right.

I got to know Hannah last spring, when she was a student in Critical Race Studies, a 1L elective course that I teach. The course is an introduction to critical race theory as well as related scholarship on law and race from other schools of thought. It is not a course for the faint of heart, given how controversial critical race theory has become and how challenging it can be for students (or anyone else) to vigorously but respectfully debate sensitive topics related to race and racism.

Hannah was a wonderful contributor to the course, both in class discussion and in her weekly short papers. (Students submitted a short essay each week for eight weeks—a grueling schedule, but good preparation for clerking!) Hannah was a fairly active participant in class discussion, always thoughtful and respectful in raising issues or responding to others' comments. Her essays were consistently strong. They reflected both her skill as a writer but also a good lawyer's instinct to ground one's arguments in case law. In a course like Critical Race Studies, it is easy to keep one's arguments at the theoretical level, or to generalize about what courts are doing or what doctrine says. But Hannah's essays stood out for bringing specific cases into the analysis.

One of my goals in teaching Critical Race Studies is to push students to take seriously the "critical" in "Critical Race Theory" and apply their analytical skills to criticize not only legal positions they oppose, but legal positions they sympathize with. This is something Hannah did well. For example, in one essay, she discussed the parties' positions in *Students for Fair Admissions v. Harvard*, the affirmative action case that the Supreme Court is likely to decide any day now. While her normative view is that affirmative action should be upheld, the essay perceptively exposed weaknesses in both Harvard's defense of their admissions practices and in the challenger's grounds for attacking them.

Overall, Hannah was a strong contributor to the class, and she received a well-deserved "A" (a 180 in our peculiar grading system) in the course.

Let me say just a bit more about Hannah. I have found her to be a friendly, conscientious, and easy-going person. She is thriving and deeply engaged at the Law School, as you can see from her resume. Less apparent from her resume are her interests outside of the law, which are deep and varied. She grew up in Snowmass Village, Colorado, and many of her interests were forged in the Rocky Mountains—alpine skiing, hiking, rafting, and even foraging for wild mushrooms. She loved the years she spent in Houston, including as an intern for Judge Lee Rosenthal. She's an avid traveler, both domestically and internationally. She has long done creative writing, and (as I found in her essays for class) her love of writing has paid dividends even for the very different styles of writing required by law school.

In sum, Hannah is a successful student at one of the toughest law schools in the country. She brings energy, enthusiasm, and thoughtfulness to her work, and I believe she will thrive as a judicial clerk. I am happy to recommend Hannah to you and thank you for considering her application.

Sincerely,

William H.J. Hubbard

William Hubbard - whhubbar@uchicago.edu

WRITING SAMPLE

Hannah George
6104 S. Woodlawn Ave. Apt. 410
Chicago, IL 60637
(970) 9803-695
hvlgeorge@uchicago.edu

As a summer clinic intern in the Civil Rights and Police Accountability Project, I prepared the attached memorandum for a potential lawsuit on behalf of an indigent client. The memorandum examined whether a § 1983 claim would have been barred by the *Heck v. Humphrey* doctrine due to our client's conviction for battery against a police officer. If the claim was not barred, then the statute of limitations would have prevented us from seeking relief, as nearly a decade had passed since the encounter at issue between our client and the arresting officers. To preserve client confidentiality, all individual names and dates have been redacted (as indicated in brackets or a series of X's in the text). I have received permission from my clinical professor to use this memorandum as a writing sample.

I am the only person who has edited this memorandum. My professor looked over an initial draft of this memorandum and requested additional facts of the case for some of the sources touched on in the analysis for the purposes of his own decision-making, but provided no edits or other feedback. This work is entirely my own.